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CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

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COMMISSIONERS

TITLES 25-27

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
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United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

TITLE 25

ANIMALS

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2. Inspection and Suppression of Diseases Among Livestock, §§ 25-201, 26-207A, 25-207B, 25-210, 25-212, 25-212A, 25-218, 25-232, 25-236, 25-238.
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6. Bang's Disease, §§ 25-606, 25-610, 25-613, 25-613A, 25-616.
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29. Beef Promotion, §§ 25-2907, 25-2908.
30. Fur Farms, § 25-3001.
31. Dairy Products — Marketing, §§ 25-3101 — 25-3104, 25-3107, 25-3109, 25-3111 — 25-3116, 25-3121, 25-3122.
33. Idaho Livestock Dealer Licensing, § 25-3303.
35. Animal Care, §§ 25-3501, 25-3501A, 25-3502, 25-3504 — 25-3507, 25-3511, 25-3514, 25-3520A, 25-3520B.
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38. Agriculture Odor Management Act, §§ 25-3801 — 25-3809.
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CHAPTER 1

CONTROL OF SHEEP DISEASES

SECTION.
25-126. Creation of board.
25-127. Members — Appointment, qualifications, salary — Oath.
25-128. Powers and duties of the Idaho sheep and goat health board.
25-129. Rules — Executive secretary, veterinarian, inspectors, salaries, expenses and office.
25-130. Fixing assessment rate — Payment of claims — Report — Inspection, quarantine and treatment of sheep — Districts.
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25-136. Appropriation for salary and expenses.
25-141B. Extent of eradication area — Supervision and quarantine of premises.
25-141C. Sheep — Goats — Scrapie — Or other diseases — Herd depopulation.
25-141D. Creation of sheep and goat disease indemnity fund.
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25-150. Regulation of public sale yards and public auction sales.
25-155. Duties and powers of the board pertaining to promotion, research and education policy.
25-156. Report.
25-157. Bonds of agents and employees. [Repealed.]
25-158. State not liable for acts or omissions of board or of its employees.
25-160. Referendum for wool growers.

25-126. Creation of board. — The Idaho sheep and goat health board is hereby created within the department of agriculture, but its officers and

employees shall not be subject to the administrative control of the director of the department of agriculture. The administrative officers and employees of the board shall be nonclassified employees. The board may contract with the director of the department of agriculture for administrative and/or veterinary services.

History.
1951, ch. 250, § 1, p. 527; am. 1974, ch. 18, § 97, p. 364; am. 1985, ch. 63, § 1, p. 125; am. 2012, ch. 117, § 1, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "The Idaho sheep and goat health board" for "A state board of sheep commissioners" at the beginning of the section.

25-127. Members — Appointment, qualifications, salary — Oath. — The Idaho sheep and goat health board, hereinafter called the board, shall consist of five (5) members, consisting of experienced wool growers or goat raisers, or a combination of experienced wool growers and goat raisers, and no two (2) of whom shall be from the same county; said members shall be appointed by and serve at the pleasure of the governor. Members shall hold their offices for the term for which they are appointed and thereafter until their successors are duly appointed and qualified.

As vacancies occur upon the board, the Idaho wool growers association shall submit to the governor the names of two (2) persons qualified and suitable for appointment for each such vacancy from whom the governor shall make his appointment to fill such vacancies. The first board shall be appointed for the following terms: two (2) members shall be appointed to hold office until the first Monday of January 1952; two (2) members shall be appointed to hold office until the first Monday of January 1954; one (1) member shall be appointed to hold office until the first Monday of January 1956; and at the expiration of said dates for the members first appointed and until the expiration of terms thereafter, members shall be appointed to fill such vacancies for a term of six (6) years; and in case of any vacancy occurring in the office of a board member at any time other members shall be appointed, who in each instance shall hold office until the unexpired term of the member whom he is appointed to succeed. Each of said members, before entering upon the duties of his office, shall take and subscribe to the oath of office required by section 59-401, Idaho Code. The members of the board may be compensated as provided by section 59-509(d), Idaho Code. Said compensation may be paid from the Idaho sheep and goat health account in the same manner as other expenses are paid. Each member of said board shall be a qualified elector of the county from which he is chosen and must reside during his term of office within the state of Idaho. Said board must hold a meeting annually and at any other time if so requested by any member of the board. The Idaho sheep and goat health board may request the removal of a board member, with or without cause, by a majority vote. Upon receipt of the request, the governor may immediately withdraw the board member's appointment.

History.
1951, ch. 250, § 2, p. 527; am. 1971, ch. 136, § 12, p. 522; am. 1980, ch. 247, § 21, p. 582; am. 1985, ch. 63, § 2, p. 125; am. 1997, ch.

116, § 1, p. 289; am. 1998, ch. 205, § 1, p. 726; am. 2012, ch. 117, § 2, p. 321; am. 2013, ch. 91, § 1, p. 223.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "Idaho sheep and goat health board" for "state board of sheep commissioners" and made related changes throughout; inserted "and serve at the pleasure of" preceding "the governor" in the first paragraph; and added the last two sentences.

The 2013 amendment, by ch. 91, substituted "consisting of experienced wool growers or goat raisers, or a combination of experienced wool growers and goat raisers" for "all of whom shall be experienced wool growers" in the first sentence.

For more on the Idaho wool growers association, see *http://www.idahowool.org*.

25-128. Powers and duties of the Idaho sheep and goat health board. — The board shall have the authority to perform all those duties and powers necessary for the prevention, control, and eradication of diseases which may include the supervision of sheep, handling of sheep, shipping, transporting or moving of sheep, regulation of sheep, the making of rules concerning sheep and all other matters pertaining to sheep either in the state of Idaho or which may be brought into or shipped from the state of Idaho. The board shall also be responsible for all matters relating to the prevention, control, and eradication of diseases pertaining to goats within the state of Idaho with the provisions of this chapter also applying to goats. The board may also designate a portion of the assessment, as provided in sections 25-130 and 25-131, Idaho Code, to help carry on the work for the prevention and control of damage caused by predatory animals and other vertebrate pests.

History.

I.C., § 25-128, as added by 1997, ch. 116, § 3, p. 289; am. 1998, ch. 205, § 2, p. 726; am. 2012, ch. 117, § 3, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "the Idaho sheep and goat health board" for "state board of sheep commissioners" in the section heading.

25-129. Rules — Executive secretary, veterinarian, inspectors, salaries, expenses and office. — (1) The board shall elect one (1) of its members chairman. The said board is empowered to make rules for governing itself and such rules as it may deem necessary for the enforcement of the provisions of this chapter and to enforce all such rules, and shall have exclusive control of all matters pertaining to the sheep industry. It shall be empowered to make and enforce rules for quarantining, or otherwise treating sheep which may be infected, affected or infested with ticks, lice or any other parasites detrimental or injurious to sheep, or any infectious or contagious disease of sheep and for the prevention, control and eradication of infectious or contagious diseases, ticks, lice or other parasites detrimental to sheep. All such rules adopted by said board shall have the same force and effect as law and any person, association, firm or corporation violating such rules shall be deemed guilty of a misdemeanor.

(2) The board is empowered to select an executive secretary who may or may not be a member of the board, and such executive secretary shall have the authority and power to sign any and all lawful claims or vouchers to be made, filed or drawn by or on behalf of the board against the Idaho sheep and goat health account, and for such purposes he shall be regarded as the administrative head of the agency and he shall perform such other and further duties as the board shall direct.

(3) The board is empowered to appoint a veterinarian in charge, who must be duly licensed in the state of Idaho and who is a graduate of a recognized and accredited school of veterinary medicine, whose duties and powers shall be defined and prescribed by said board; which said officer shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The veterinarian in charge shall receive such compensation as may be allowed by said board and actual and necessary expenses incurred in the performance of his duties. The veterinarian in charge shall be at all times subject to the authority of the board and shall have the same powers hereinafter provided for all other inspectors appointed by the board under this chapter. The veterinarian in charge shall have authority and power to sign all lawful claims or vouchers filed or drawn on behalf of the board against the Idaho sheep and goat health account.

(4) The board is hereby empowered to appoint all other inspectors, veterinarians and such other employees and assistants as may be necessary to carry out the duties and powers herein conferred and fix the compensation of all such appointees. All salaries and expenses of every kind incurred in carrying out the provisions of this chapter shall be paid from the Idaho sheep and goat health account.

(5) Inspectors and veterinarians appointed by the Idaho sheep and goat health board shall have the power and duty to assist law enforcement entities in the enforcement of all laws of the state pertaining to the identification, inspection and transportation of sheep and other livestock, and shall have general authority to assist law enforcement entities in the enforcement of theft laws of the state with respect to sheep and other livestock.

History.

1951, ch. 250, § 4, p. 527; am. 1969, ch. 156, § 1, p. 484; am. 1971, ch. 136, § 13, p. 522; am. 1974, ch. 18, § 99, p. 364; am. 1977, ch. 134, § 1, p. 289; am. 1985, ch. 63, § 4, p. 125; am. 1997, ch. 116, § 4, p. 289; am. 2012, ch. 117, § 4, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "the Idaho sheep and goat health" for "the sheep commission" and related language throughout the section and deleted "with the approval of the governor" following "to appoint" in the first sentence of subsection (3).

Cross Reference. Penalty for misdemeanor when not otherwise provided, § 18-113.

25-130. Fixing assessment rate — Payment of claims — Report — Inspection, quarantine and treatment of sheep — Districts. — The board shall meet and fix the rate of special assessment to be levied as provided for in this chapter. Any change in the rate of the special assessment shall be made to be effective at the start of a calendar year. The board shall audit all bills of salaries and expenses incurred in the enforcement of this chapter that may be payable from the Idaho sheep and goat health account which shall be audited, allowed and paid as other claims against the state. The board shall have power to order an inspection or quarantine of any sheep in the state of Idaho, whether diseased or exposed to disease, to compel dipping or other treatment of sheep, whether diseased or exposed to disease, at such times and as often as it deems necessary to ensure the suppression or eradication of any infectious or contagious disease of sheep

and divide the state into such districts as may be necessary for the enforcement of this chapter.

History.
1951, ch. 250, § 5, p. 527; am. 1969, ch. 156, § 2, p. 484; am. 1985, ch. 63, § 5, p. 125; am. 1986, ch. 3, § 1, p. 41; am. 1997, ch. 116, § 5, p. 289; am. 2012, ch. 117, § 5, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "the Idaho sheep and goat health account" for "the sheep commission account" in the third sentence.

25-131. Idaho sheep and goat health account — Assessment — First purchaser to make report — Penalty for failure to make report — Appropriation. — (1) In order for the board to carry out the provisions of this chapter, the board shall assess, levy and collect an assessment established by the board, not to exceed twelve cents (12¢) per pound on all wool, in the grease basis, sold through commercial channels. In the event that a sheep, which produces wool subject to this assessment, shall be located outside the state of Idaho during a part of the assessment year, the amount of the assessment shall be reduced on a pro rata basis. Such assessment shall be levied and assessed to the producer at the time of the first sale of wool and shall be deducted by the first purchaser from the price paid to the producer at the time of such first sale. The assessment provided in this section shall not be levied or collected on any casual sale. In addition to the assessment provisions of this section related to wool, the board may by rule establish an assessment on goats that would assess goats on a per head basis and at a rate that is comparable to the assessment on wool.

(2) The assessment provided by this section shall constitute a lien prior to all other liens and encumbrances upon such wool except liens which are declared prior by operation of a statute of this state.

(3) If the first purchaser lives or has his principal office in another state, the producer shall make the reports and pay the assessments to the board as required under this section unless the first purchaser agrees in writing to make such reports and pay such assessments.

(4) The first purchaser shall specify the amounts of assessments withheld in any written statements made to the producer.

(5) The first purchaser shall make reports to the board on forms prescribed by the board, and no first purchaser shall fail to make such reports or falsify any such reports. The assessment deducted and withheld by a first purchaser, as required in subsection (1) of this section, shall be paid to the board on a quarterly calendar year basis, and shall be due and payable within thirty (30) days after the end of the quarter. All moneys collected by the board under the provisions of this chapter shall be paid to the state treasurer. All moneys received from the assessment pursuant to this section shall be deposited in the state treasury by the state treasurer to the credit of a special account in the state operating fund hereby created to be known as the "Idaho sheep and goat health account."

(6) A first purchaser who delays transmittal of reports and payments of assessments beyond the time stated in subsection (5) of this section shall pay five percent (5%) of the amount due for the first month of delay and one percent (1%) of the amount due for each month of delay thereafter. Such moneys shall be deposited in the Idaho sheep and goat health account.

(7) In addition thereto, the said account shall consist of any appropriations made by the legislature for the use of and expenditure by said board. All fees of every kind collected under the provisions of this chapter, or under any rules and regulations made pursuant to the provisions of this chapter, shall be deposited in the state treasury in the manner hereinabove described. The moneys in said special account are hereby appropriated for the use and expenditure of said board carrying out the provisions of this chapter and the rules and regulations made herein and said account is hereby declared to be a continuing account.

(8) All moneys appropriated to the board for the purposes of sheep disease prevention, abatement, suppression, control or eradication shall be expended by the board only for those purposes, in accordance with the duties specified in section 25-128(1), Idaho Code.

(9) All moneys received by the board from that portion of the special assessment which is made to carry on the work for prevention and control of damage caused by predatory animals and other vertebrate pests shall be expended by the board in the respective districts comprising the counties where the assessment was collected less the actual and necessary administrative costs for carrying out the provisions of this chapter. All moneys received by such account for work for prevention and control of damage caused by predatory animals and other vertebrate pests except as herein otherwise provided shall be expended by the board within the district or districts specified by the party or agency providing such funds and any trust fund must be held inviolate for the purposes of the trust.

(10) The right is reserved to the state of Idaho to audit the funds of the board at any time.

History.
1951, ch. 250, § 6, p. 527; am. 1957, ch. 176, § 1, p. 340; am. 1959, ch. 57, § 1, p. 124; am. 1967, ch. 38, § 1, p. 60; am. 1969, ch. 156, § 3, p. 484; am. 1971, ch. 67, § 1, p. 153; am. 1977, ch. 136, § 1, p. 292; am. 1983, ch. 123, § 1, p. 317; am. 1985, ch. 63, § 6, p. 125; am. 2012, ch. 117, § 6, p. 321; am. 2013, ch. 91, § 2, p. 223.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "the Idaho sheep and goat health" for "sheep commission" and made related changes in the section heading and throughout the section and, in subsection (1), substituted "twelve cents (12¢) per pound" for "six cents (6¢) per pound" in the first sentence and added the last sentence.

The 2013 amendment, by ch. 91, added subsection (10).

Cross Reference. State treasurer, § 67-1201 et seq.

25-136. Appropriation for salary and expenses. — The salaries, expenses and maintenance of the said board and all other salaries and expenses not otherwise provided for, not heretofore provided for in this act, shall be paid out of the Idaho sheep and goat health account. The legislature may each year set aside from the total appropriation which it shall make for the care, handling, inspection and protection and eradication of disease of livestock in the state, that proportion of the total amount which the value of the sheep and goats in the state of Idaho bears to the value of other livestock in the state as determined by the director of the department of agriculture.

History.
1951, ch. 250, § 11, p. 527; am. 1969, ch. 156, § 8, p. 484; am. 1974, ch. 18, § 100, p. 364; am. 2012, ch. 117, § 7, p. 321.

Compiler's Notes. The term "this act" refers to S.L. 1951, ch. 250, which is compiled as §§ 25-126, 25-127, 25-129 to 25-131, 25-133 to 25-140, 25-143 to 25-150, and 25-2612A.

The 2012 amendment, by ch. 117, substituted "the Idaho sheep and goat health account" for "the sheep commission account" in the first sentence.

25-141B. Extent of eradication area — Supervision and quarantine of premises. — The board is hereby authorized to quarantine any portion of this state when the fact is determined that sheep or goats are affected with scrapie or any other contagious, infectious or communicable disease. The area designated for the control of scrapie may consist of the entire state, a portion of the state, entire county, or part of the county, if it is less than the entire county; the boundary of the area shall be clearly defined in the order for the establishment of the area.

History.
I.C., § 25-141B, as added by 1997, ch. 116, § 8, p. 289; am. 2012, ch. 117, § 8, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "the board" for "the state board of sheep commissioners" in the first sentence.

25-141C. Sheep — Goats — Scrapie — Or other diseases — Herd depopulation. — In order to prevent the introduction or dissemination of scrapie or other contagious, infectious or communicable diseases into or among the sheep or goat population of Idaho, the board is granted authority to identify diseases of concern and to condemn infected herds and to require the destruction or other disposition as approved by the board of such herd or herds. The board is authorized to reimburse the owner by cash payment for any affected or exposed sheep or goats which have been condemned, appraised and slaughtered or destroyed or otherwise disposed of by direction of the board and for property destroyed and for labor employed in digging trenches and for cleaning and disinfecting premises where such infected or exposed sheep and goats have been kept; provided, that the board shall only pay the difference between the appraised price less federal indemnity and salvage value for any sheep or goats condemned and slaughtered or destroyed under this section and the actual costs for burials or disposal of animal carcasses and for cleaning and disinfecting of premises where infected or exposed sheep or goats have been kept. In the event federal indemnity is unavailable in regard to the value of the sheep or goats, the board shall only pay the difference between the appraised price and salvage value. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in sheep or goat marketing. A maximum per head value may be established by rules of the board. The board or its designee may grant a hearing to any person, under such rules as the board may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the board or its designee under the provisions of chapter 52, title 67, Idaho Code.

History.
I.C., § 25-141C, as added by 1997, ch. 116, § 8, p. 289; am. 2012, ch. 117, § 9, p. 321.
Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "board of sheep commissioners" twice in the second sentence.

25-141D. Creation of sheep and goat disease indemnity fund. — There is hereby created within the department of agriculture a board account to be known as the sheep and goat disease indemnity fund. Funds may be received into this account from any source including, but not limited to, donations, gifts, grants, federal funds, Idaho sheep and goat health funds, or appropriations from general or dedicated accounts. Moneys received into this account shall be deposited with the state treasurer to the credit of the sheep and goat disease indemnity fund. Moneys deposited into this account may only be used to indemnify owners whose animals or herds have been condemned or destroyed or otherwise disposed of by direction of the board, and for property destroyed, for labor employed in digging trenches, and for cleaning and disinfecting of premises where infected or exposed sheep and goats have been kept.

History.
I.C., § 25-141D, as added by 1997, ch. 116, § 8, p. 289; am. 2012, ch. 117, § 10, p. 321.
Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" in the first sentence and "Idaho sheep and goat health funds" for "sheep commission funds" in the second sentence.

25-143. Transportation of sheep from quarantined area. — It shall be unlawful for any transportation company or operator of any motor truck to receive for transportation or transport from the quarantined area of this state into or through an unquarantined area of this state or receive for transportation or transport within the quarantined area of this state any sheep, or as a connecting carrier knowingly receive without the quarantined area, sheep from the quarantined area, and transport the same within the state, except as hereinafter provided; nor shall any person, company or corporation deliver for such transportation to any transportation company, or operator of any motor truck, any sheep from the quarantined area, except as hereinafter provided; nor shall any person, company or corporation drive on foot or cause to be driven on foot or transport in private conveyances or otherwise move within the quarantined area, any sheep except as hereinafter provided; and the board shall make and promulgate rules which shall permit and govern the inspection, treatment, certification, handling and method and manner of delivery and shipment or other movement of sheep from a quarantined area of this state, or the shipment or other movement of sheep within a quarantined area of this state.

History.
1951, ch. 250, § 18, p. 527; am. 1997, ch. 116, § 9, p. 289; am. 2012, ch. 117, § 11, p. 321.
Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" near the middle of the section.

25-144. Movement of sheep from quarantined into unquarantined area prohibited. — It shall be unlawful to move sheep

from a quarantined area of the state in any manner whatsoever into an unquarantined area of this state or for connecting carriers to receive sheep of the quarantined area at a point outside of the quarantined area and transport the same within the state, except in accordance with the rules and regulations of the board. It shall be unlawful to move any sheep within a quarantined area of the state except in accordance with the rules and regulations of the said board.

History.
1951, ch. 250, § 19, p. 527; am. 2012, ch. 117, § 12, p. 321.
Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" at the end of the first sentence.

25-145. Quarantine of diseased animals. — The representatives of the board or any inspector or agent of the bureau of animal industry of the United States department of agriculture shall have authority to quarantine, where found, or in any convenient place nearby, any animals affected or infected with or exposed to the contagion or infection of any contagious, infectious or communicable disease. The establishment of any such quarantine shall be immediately reported to the board and said board is authorized and empowered to prescribe such rules and regulations as may be deemed necessary for the movement within the state and the handling, method of treatment and disposition of such animals so quarantined. Written notice of such quarantine shall be given to the owner or custodian of the quarantined animals and it shall be unlawful to move, treat, dip or dispose of such animals, except in accordance with said rules and regulations of the board.

History.
1951, ch. 250, § 20, p. 527; am. 2012, ch. 117, § 13, p. 321.
Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" near the beginning of the first sentence.

25-146. Inspection and treatment of diseased sheep. — The representative of the board or any inspector or agent of the United States bureau of animal industry shall have authority to enter upon any grounds or premises where sheep are kept and to inspect, diagnose and treat sheep found thereon. They shall be authorized and empowered to require owners of sheep to apply such remedies, dips and other curative, protective or preventive agents as may by the board be deemed necessary in order to prevent the introduction or dissemination of disease among the sheep of this state or to effect a cure of affected or infected sheep and in the event that any owner or custodian of such sheep shall refuse to comply with the rules of the board regarding the use of such remedies, dippings and curative agents within the time set by the board and in the manner provided in this act or by the rules of said board, then the board shall be empowered to treat or dip such sheep and the cost thereof, together with all incidental expenses therewith, if any, which shall include the cost and expense of the care and maintenance of said sheep during the time of their custody by the board or its representatives as herein provided, shall be borne by the owner of the sheep so treated or dipped and shall be, until paid, a lien against such sheep.

History.
1951, ch. 250, § 21, p. 527; am. 1997, ch. 116, § 10, p. 289; am. 2012, ch. 117, § 14, p. 321.

Compiler's Notes. The term "this act" refers to S.L. 1951, ch. 250, which is compiled as §§ 25-126, 25-127, 25-129 to 25-131, 25-133 to 25-140, 25-143 to 25-150, and 25-2612A.

The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" in the first sentence.

25-148. Importation of sheep — Notice of intention. — When an owner or person in charge of sheep desires to bring such sheep into this state from an adjoining state or territory, he shall notify the board or its agent, in writing, or by telephone or by facsimile, of such intention before entering the state, stating the time and place where such sheep shall enter; provided, however, that no notice will be required when sheep are in transit through the state, except sheep from a known infected area shall only be admitted in accordance with the rules of the board.

History.
1951, ch. 250, § 23, p. 527; am. 1997, ch. 116, § 12, p. 289; am. 2012, ch. 117, § 15, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" near the middle of the section.

25-150. Regulation of public sale yards and public auction sales. — For the purpose of preventing the spread of contagious, infectious or communicable diseases among sheep the board is hereby empowered to make reasonable rules and regulations with regard to the handling of sheep in or at public sale yards and public auction sales where sheep are generally sold and shall have the power and authority to prevent the sales of sheep at such public sale yards or public auction sales unless said rules and regulations shall be complied with.

History.
1951, ch. 250, § 25, p. 527; am. 2012, ch. 117, § 16, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" near the beginning of the section.

25-155. Duties and powers of the board pertaining to promotion, research and education policy. — (1) The board may contract with the Idaho wool growers association, inc., or a similar agency for the administration of the Idaho sheep and goat health board's business pertaining to the promotion, research and education policy.

(2) In the administration of sections 25-153 through 25-160, Idaho Code, the board shall, in conjunction with the Idaho wool growers association, inc., have the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity;

(b) To find new markets for sheep, lamb and wool products;

(c) To give, publicize and promulgate reliable information showing the value of sheep, lamb and wool products for any purpose for which it is found useful and profitable;

(d) To make public and encourage the widespread national and international use of sheep, lamb and wool products produced in Idaho;

(e) To investigate and participate in studies of the problems peculiar to the producers of sheep, lamb and wool in Idaho.

(3) The board shall have the duty, power and authority:

(a) To take such action as the board deems necessary or advisable in order to stabilize and protect the sheep, lamb and wool industry of the state and the health and welfare of the public;

(b) To sue and be sued;

(c) To enter into such contracts as may be necessary or advisable;

(d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation;

(e) To make use of such advertising means and methods as the board deems advisable and to enter into contracts and agreements for research and advertising within and without the state;

(f) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the board, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement;

(g) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this act;

(h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in the provisions of this act;

(i) To adopt, rescind, modify and amend all necessary and proper orders and resolutions for the procedure and exercise of its powers and the performance of its duties;

(j) To incur indebtedness and carry on all business activities;

(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and the public at all times;

(*l*) To adopt from time to time, alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and performance of its duties under this act.

History.

I.C., § 25-155, as added by 1998, ch. 205, § 4, p. 726; am. 2012, ch. 117, § 17, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "commission" in the section heading and throughout the section and substituted "Idaho sheep and goat health board's business" for "sheep commission's business" in subsection (1).

25-156. Report. — On or before January 15 of each year, the board, or entity the board has contracted with pursuant to the provisions of section 25-155, Idaho Code, shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income to the board during the preceding fiscal year. The report shall also include an estimate of income to the board for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. The report shall also include a reconciliation between the estimated

income and expenses projected and the actual income and expenses of the preceding fiscal year.

History.
I.C., § 25-156, as added by 1998, ch. 205, § 4, p. 726; am. 2003, ch. 32, § 15, p. 115; am. 2012, ch. 117, § 18, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "Report" for "Deposit and disbursement of funds" in the section heading, deleted former subsections (1), (2), (3), (5), and (6), concerning the deposit, disbursement, and auditing of funds, and, in the remaining paragraph, substituted "board" for "commission" three times and inserted "or entity the board has contracted with pursuant to the provisions of section 25-155, Idaho Code."

25-157. Bonds of agents and employees. [Repealed.]

Repealed by S.L. 2012, ch. 117, § 19, effective July 1, 2012.

History.
I.C., § 25-157, as added by 1998, ch. 205, § 4, p. 726.

25-158. State not liable for acts or omissions of board or of its employees. — The state of Idaho is not liable for the acts or omissions of the board or any member thereof or any officer, agent or employee thereof.

History.
I.C., § 25-158, as added by 1998, ch. 205, § 4, p. 726; am. 2012, ch. 117, § 20, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "commission" in the section heading and the text.

25-160. Referendum for wool growers. — Prior to the provisions of this act becoming effective, a referendum shall be held to determine if producers favor the provisions of this act. The question shall be submitted by secret ballot upon which the words "Do you favor a promotion, research, and education program for the Idaho sheep industry that is funded by all producers with no refund provision?" are printed with a square before each of the words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the producers voting in the referendum or a majority of the production represented by the producers voting in the referendum vote in favor of the question submitted, the provisions of this act shall become effective.

(1) The procedures necessary to initiate a referendum in subsequent years, but not less than five (5) years from the passage of the initial referendum, are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such referendum signed by ten percent (10%) or more of sheep producers who have paid an assessment to the Idaho sheep and goat health board in either of the two (2) immediate past calendar years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho sheep and goat health board.

(2)(a) Any referendum shall be conducted only among sheep producers who paid an assessment to the Idaho sheep and goat health board during one (1) of the two (2) years prior to the referendum.

(b) Any referendum must be supervised by the Idaho department of agriculture.

(c) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(d) Notice of any referendum must be given by the board in a manner determined by it. The ballots must be prepared by the board and forwarded to eligible producers, who shall return them within twenty (20) days after mailing by the board.

(e) The board shall pay the costs of any referendum.

History.

I.C., § 25-160, as added by 1998, ch. 205, § 4, p. 726; am. 2012, ch. 117, § 21, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "Idaho sheep and goat health board" for "Idaho sheep commission" in subsections (1) and (2) and "board" for "commission" throughout paragraphs (2)(d) and (e).

CHAPTER 2

INSPECTION AND SUPPRESSION OF DISEASES AMONG LIVESTOCK

SECTION.

25-201. Powers of division of animal industries — By whom exercised.
25-207A. Private feeding of big game animals — Rules for disease control.
25-207B. Identification of livestock, poultry or fish — Rules for disease control.
25-210. Powers of veterinarians and inspectors.
25-212. Reportable diseases which constitute an emergency — Rules — Duty of veterinarians and owners of livestock and other animals — Indemnity.
25-212A. Deficiency warrants for disease control.
25-218. Diseased animals — Temporary quarantine — Notice.
25-232. Disease and animal damage control tax levy and fees on cattle, horses, and mules.
25-236. Possession, sale, trade, barter, exchange and importation of animals.
25-238. Civil penalties.

25-201. Powers of division of animal industries — By whom exercised. — The powers in this chapter conferred upon the division of animal industries (and unless otherwise apparent from the context, the word "division" hereinafter used refers to the division of animal industries) shall be exercised by the director of the department of agriculture or the administrator of the division of animal industries and such officers, employees and deputies as the administrator, with the approval of the director, may authorize, with the exception of those powers and duties pertaining to sheep, which powers and duties shall be exercised in said department by the board.

History.

1919, ch. 35, § 1, p. 121; C.S., § 1840; am. 1921, ch. 15, § 16, p. 14; I.C.A., § 24-201; am. 1974, ch. 18, § 101, p. 364; am. 2012, ch. 117, § 22, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "board" for "state board of sheep commissioners" at the end of the section.

25-207A. Private feeding of big game animals — Rules for disease

control. — (1) In order to provide for disease control and the protection of health and human safety, the division of animal industries is authorized to promulgate rules for the regulation and prohibition of the private feeding of big game animals.

(2) The division shall cooperate with the department of fish and game in the designation of such areas and the promulgation of rules necessary to facilitate such regulation.

(3) The Idaho department of fish and game shall cooperate with the division regarding spacial separation of big game and livestock in any areas designated by the division as requiring disease control methods.

(4) Rulemaking authority pursuant to the provisions of this section shall only apply to regulate or prohibit persons who purposely or knowingly provide supplemental feed to big game animals in a manner that results in an artificial concentration of such animals that may potentially contribute to the transmission of disease.

(5) Rulemaking authority pursuant to the provisions of this section shall not apply to supplemental feeding activities conducted by the department of fish and game.

History.
I.C., § 25-207A, as added by 2003, ch. 83, § 1, p. 258; am. 2004, ch. 151, § 1, p. 486.

25-207B. Identification of livestock, poultry or fish — Rules for disease control. — (1) In order to provide for disease control and increase the traceability of infected or exposed animals or fish, the division of animal industries, in cooperation with the state brand board, is authorized to promulgate rules for the identification of livestock, poultry or fish and the registration of premises where such animals or fish are held.

(2) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of this section, or rules promulgated hereunder, shall not be considered a public record and shall be exempt from public disclosure requirements as provided in section 9-340D, Idaho Code.

History.
I.C., § 25-207B, as added by 2004, ch. 205, § 1, p. 627.

25-210. Powers of veterinarians and inspectors. — (1) In order to prevent the introduction or dissemination of disease among the animals of this state, the administrator of the division shall be authorized and directed to:

(a) Quarantine any portion of this state and it shall be unlawful to move animals from or into such quarantined area except in accordance with the rules of the division;

(b) Prohibit or restrict entry of animals into the state that may be exposed to, infected with or may otherwise harbor or be contaminated with any contagious, infectious or communicable disease or agent;

(c) Prohibit or restrict entry of vehicles, other means of conveyance or any

other item into the state which may harbor or be contaminated with any contagious, infectious or communicable disease or agent;

(d) Prohibit or restrict movement of vehicles, other means of conveyance, or any other item, that may harbor or be contaminated with any contagious, infectious or communicable disease or agent, out of any quarantined area or into any quarantined area;

(e) Authorize and empower state veterinarians, livestock inspectors and the inspectors or agents of the United States department of agriculture/animal and plant health inspection service/veterinary services under the joint supervision of the state division and chief of the United States department of agriculture/animal and plant health inspection service/veterinary services to inspect, quarantine, treat, test, vaccinate, and condemn, appraise, slaughter and dispose of any animals affected or infected with any contagious, infectious or communicable disease, or infected with the disease of epithelioma of the eye, commonly known as "cancer eye," or that have been exposed to any such disease;

(f) Order the preventive slaughter or destruction of disease susceptible animals that have not been exposed to create an area or areas that are free of all susceptible animals in order to stop spread of a highly contagious disease in the state;

(g) Establish biosecurity procedures and restrict human access to quarantined areas and infected and exposed premises in order to prevent dissemination of disease;

(h) Quarantine, clean and disinfect all premises where infected or exposed animals have been kept.

(2) In order to carry out the purpose of this chapter, state and federal veterinarians, inspectors, or agents are hereby authorized and empowered to enter any field, feed yard, barn, stable, railroad car, stockyards, truck, airplane, other means of conveyance, or other premises in this state where animals are kept. Said veterinarians, inspectors or agents, state and federal, shall be empowered to call on sheriffs, constables and peace officers to assist them in the discharge of their duties and in carrying out the provisions of this chapter and of said Acts of Congress approved May 29, 1884, and the Act of March 3, 1905. Such sheriffs, constables, and other peace officers shall give such assistance as may be requested by said veterinarians, inspectors or agents in carrying out the provisions of this chapter and said Acts of Congress. The word animal or animals used in this chapter shall include any vertebrate member of the animal kingdom, except man; and the word disease shall include diseases of these animals.

(3) Any deer, elk, moose, bighorn sheep or bison handled, imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture.

History.
1919, ch. 35, § 9, p. 124; C.S., § 1849; I.C.A., § 24-210; am. 1953, ch. 6, § 1, p. 7; am. 1957, ch. 60, § 2, p. 102; am. 1974, ch. 18,

§ 109, p. 364; am. 1987, ch. 211, § 1, p. 444; am. 1991, ch. 36, § 1, p. 72; am. 1993, ch. 16, § 6, p. 58; am. 2002, ch. 87, § 1, p. 206.

Compiler's Notes. The Act of Congress of May 29, 1884 was codified as 21 U.S.C. § 114. The Act of Congress of March 3, 1905 was codified as 21 U.S.C. §§ 123-127. Both acts were repealed by the Act of Congress of May 13, 2002 (P.L. 107-171).

Section 3 of S.L. 2002, ch. 87 declared an emergency. Approved March 19, 2002.

25-212. Reportable diseases which constitute an emergency — Rules — Duty of veterinarians and owners of livestock and other animals — Indemnity. — The director is authorized to declare any disease, parasite or agent which: (1) has been identified by the United States department of agriculture/animal and plant health inspection service/ veterinary services (USDA/APHIS/VS) as a "communicable foreign disease not known to exist in the United States"; or (2) which is not naturally occurring in or has been eradicated from Idaho and which, if introduced into Idaho, would have a devastating impact on the livestock or other animals of the state, a disease which constitutes an emergency. The presence of such disease in any state in the United States, any country contiguous to the United States, or any country from which the state of Idaho receives animals or animal products may constitute an emergency. The director is also authorized to promulgate rules which list and regulate diseases, parasites and other agents which, if introduced into the state, would result in devastation of the livestock or other animals within the state and which diseases therefore constitute an emergency. It is hereby made the duty of all persons practicing veterinary medicine in this state to report to the division immediately, by telephone or facsimile, any and all cases of exposure to or infection of foot and mouth disease, bovine spongiform encephalopathy, chronic wasting disease, other transmissible spongiform encephalopathies, brucellosis, tuberculosis, or any foreign, exotic or emerging disease, or such other disease or diseases as may be declared to constitute an emergency by state or national authorities that they may find existing among animals of the state. Every owner of livestock or other animals and every breeder or dealer in livestock or other animals and everyone bringing livestock or other animals into this state upon observing the appearance of, or symptoms of any disease or diseases, or who has knowledge of exposure of the livestock or other animals to diseases as herein set forth among the livestock or other animals owned by him or under his care, shall give immediate notice by telephone or facsimile to the division of the facts discovered by him as aforesaid, and any owner of livestock or other animals who shall fail to make report as herein provided shall forfeit all claims for indemnity for animals condemned and slaughtered or destroyed on account of any disease or diseases as herein provided for in accordance with the provisions made and promulgated by the division. In the event the director determines that animals in the state have been exposed to or are infected with a disease which constitutes an emergency or in the event of an outbreak of any disease or diseases as herein provided among any of the animals of this state the state board of examiners is authorized and empowered, upon the recommendation of the division, to reimburse the owner by cash payment or to issue or cause to be issued certificates of indebtedness having interest at such rate as shall be set by the said state board of examiners, for the purpose

of reimbursing the owner of any affected or exposed animal, any animal ordered slaughtered or destroyed, or animals which have been condemned, appraised and slaughtered or destroyed by direction of the division, and for property destroyed and for labor employed in digging trenches, or disposing of animals by any other means and for cleaning and disinfecting premises where such infected or exposed animal or animals have been kept; provided, that the state shall only pay the difference between appraised price less federal indemnity and salvage value for any animals condemned and slaughtered or destroyed under this section and the actual costs for burial or disposal of animal carcasses and for cleaning and disinfection of premises where infected or exposed animals have been kept. In the event federal indemnity is unavailable, the state shall only pay the difference between appraised price and salvage value. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in marketing the species of the animal condemned. The director may grant a hearing to any person, under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the director under the provisions of chapter 52, title 67, Idaho Code.

History.
1919, ch. 35, § 11, p. 124; C.S., § 1851; I.C.A., § 24-212; am. 1947, ch. 163, § 1, p. 419; am. 1953, ch. 4, § 1, p. 6; am. 1974, ch. 18, § 111, p. 364; am. 1993, ch. 16, § 8, p. 58; am. 1997, ch. 21, § 1, p. 30; am. 2002, ch. 87, § 2, p. 206.

Compiler's Notes. Section 1 of S.L. 2002, ch. 87 is compiled as § 25-210.

Section 3 of S.L. 2002, ch. 87 declared an emergency. Approved March 19, 2002.

25-212A. Deficiency warrants for disease control. — Whenever the director declares an emergency, as provided in section 25-212, Idaho Code, the director shall cause the disease to be controlled and eradicated, using such funds as have been appropriated or may hereafter be made available for such purposes; provided, that whenever the cost of disease control and eradication exceeds the funds appropriated or otherwise available for that purpose, the state board of examiners may authorize the issuance of deficiency warrants against the general fund for up to five million dollars ($5,000,000) in any one (1) year for such disease control and eradication. The director, in executing the provisions of this chapter insofar as it relates to disease control and eradication, shall have the authority to cooperate with federal, state, county and municipal agencies and private citizens in disease control and eradication efforts; provided, that the state funds shall only be used to pay the state's share of the cost of the disease control and eradication efforts. Disease control and eradication costs may include costs for inspection, diagnosis of disease, indemnity paid to owners for infected, exposed or disease susceptible animals purchased and destroyed by order of the director, costs associated with burial or disposal of animal carcasses, and costs for cleaning and disinfecting of infected premises. Such moneys as the state shall thus become liable for shall be paid as a part of the expenses of the department of agriculture out of appropriations which shall be made by

the legislature for that purpose. In all appropriations hereafter made for expenses of the department of agriculture, account shall be taken of and provision made for this item of expense.

History.
I.C., § 25-212A, as added by 2002, ch. 291, § 1, p. 840.

25-218. Diseased animals — Temporary quarantine — Notice. — The representatives of the department of agriculture or division of animal industries of the state of Idaho, or any inspector or agent of the United States department of agriculture, animal and plant health inspection service, veterinary services shall have authority to quarantine temporarily, where found or in any convenient place nearby, any animals affected or infected with, or exposed to, the contagion or infection of any contagious, infectious or communicable disease. The establishment of any such temporary quarantine except the quarantine of domestic sheep, shall be immediately reported to the state division of animal industries; the temporary quarantine of domestic sheep shall be reported to the Idaho sheep and goat health board; and the state department of agriculture and state division of animal industries are hereby authorized and empowered to prescribe and enforce such rules and regulations as may be deemed necessary for the movement within the state, and the handling, method of treatment and disposition of such animals except domestic sheep, so temporarily quarantined. Such rules and regulations so made shall have the same effect as if contained in this act. Written notice of such quarantine shall be given to the owner or custodian of the quarantined animals, and it shall be unlawful to move, treat, test, dip or dispose of such animals except in accordance with said rules and regulations of said department and division.

History.
1921, ch. 35, § 2, p. 45; I.C.A., § 24-218; am. 1974, ch. 18, § 114, p. 364; am. 1993, ch. 16, § 14, p. 58; am. 2012, ch. 117, § 23, p. 321.

Compiler's Notes. The term "this act" refers to S.L. 1921, ch. 35, which is compiled as §§ 25-217 to 25-219.

The 2012 amendment, by ch. 117, substituted "Idaho sheep and goat health board" for "board of sheep commissioners" in the second sentence.

25-232. Disease and animal damage control tax levy and fees on cattle, horses, and mules. — (a) There is hereby imposed upon cattle, horses, and mules in the state of Idaho a fee of twenty-two cents (22¢) per head. Said fee shall be collected at the time of every brand inspection when a charge for brand inspection is made as required by law. Such fee when collected shall be paid by the person paying the charge for brand inspection and shall be used by the Idaho department of agriculture for livestock disease control. The state brand inspector shall collect said fees in addition to, at the same time and in the same manner as the fee collected for brand inspection. The fees so collected shall be deposited as provided in section 25-233, Idaho Code.

(b) In addition to the fee imposed in subsection (a) of this section, there is hereby imposed an additional fee of not to exceed five cents (5¢) per head

upon the same livestock subject to the fee required in subsection (a). The amount of the additional fee shall be fixed by order of the state brand board upon the written recommendation of the Idaho cattle association. The fees collected under the provisions of this subsection (b) shall be deposited in the Idaho sheep and goat health board account, and the board shall quarterly transmit the proper share of such moneys to the board of directors of each animal damage control district. The provisions of section 67-3525, Idaho Code, shall not apply to the payment of moneys from the Idaho sheep and goat health board account to the animal damage control districts.

(c) The state brand inspector shall be reimbursed for the reasonable and necessary expenses incurred for the collections required in this section, in an amount determined by the administrator of the division of animal industries, a representative of the Idaho cattle association and the inspector, but the total of such expense reimbursement for the fees collected as required in subsections (a) and (b) of this section shall not exceed one and one-quarter cents (1 1/4¢) per head.

History.
1943, ch. 139, § 8, p. 277; am. 1951, ch. 124, § 1, p. 292; am. 1955, ch. 46, § 1, p. 64; am. 1970, ch. 81, § 1, p. 200; am. 1974, ch. 18, § 125, p. 364; am. 1982, ch. 251, § 1, p. 642; am. 1985, ch. 37, § 1, p. 79; am. 1986, ch. 177, § 1, p. 467; am. 1989, ch. 5, § 1, p. 6; am. 1995, ch. 33, § 1, p. 51; am. 2012, ch. 117, § 24, p. 321.

Compiler's Notes. Section 67-3525, referred to in the last sentence in subsection (b), was repealed by S.L. 1992, ch. 124, § 2.

The 2012 amendment, by ch. 117, in subsection (b), substituted "Idaho sheep and goat health board account" for "sheep commissioners account" twice and "board" for "board of sheep commissioners."

25-236. Possession, sale, trade, barter, exchange and importation of animals. — (1) No person shall possess, offer for sale, trade, barter, exchange or importation into the state of Idaho any fox, skunk or raccoon, except as provided in subsection (2) or (3) of this section.

(2) Fur farms may possess or import any domestic fur-bearing animals with a certificate of veterinary inspection and domestic fur-bearing animals may be sold, traded, bartered or exchanged between fur farms in Idaho.

(3) Public parks, zoos, museums, and educational institutions may possess or import the animals listed in subsection (1) of this section only if the entity possesses a permit from the department of agriculture and the imported animal is accompanied by a certificate of veterinary inspection. The department of agriculture may refuse to issue a permit if the department finds that the entity requesting the permit does not have physical facilities adequate to maintain the animal in health and safety and to prevent the escape of the animal from confinement. Public parks, zoos, museums, and educational institutions that possess a permit from the department of agriculture may sell, trade, barter or exchange any of the animals listed in subsection (1) of this section with any other entity that has a valid permit from the department of agriculture.

History.
I.C., § 25-236, as added by 1981, ch. 217, § 1, p. 405; am. 1993, ch. 16, § 19, p. 58; am. 2006, ch. 226, § 1, p. 677.

Compiler's Notes. The 2006 amendment, by ch. 226, in the section heading, added "Possession"; in subsection (1), updated subsection references; rewrote subsection (2), which formerly read: "An animal specified in subsection (a) of this section may be offered

for sale, trade, barter, exchange or importation into the state of Idaho for commercial fur farming without the requirement of a permit; but an animal specified in subsection (a) hereof may be offered for sale, trade, barter, exchange or importation into the state to a public park, zoo, museum or educational institution for educational, medical, scientific or exhibition purposes only if the organization possesses a permit from the department of agriculture. The department of agriculture may refuse to issue a permit if the department finds that the organization requesting the permit does not have physical facilities adequate to maintain the animal in health and safety and to prevent the escape of the animal from confinement"; and added subsection (3).

25-238. Civil penalties. — (1) Any person, firm or corporation violating the provisions of this chapter or rules promulgated under this chapter may be assessed a civil penalty by the department or its agent of not more than five thousand dollars ($5,000) for each offense. Persons, firms or corporations against whom civil penalties are assessed are liable for reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person, firm or corporation charged has been given notice and an opportunity for a hearing pursuant to the provisions of chapter 52, title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person, firm or corporation fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. Any person, firm or corporation against whom the department has assessed a civil penalty under this chapter may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code. Moneys collected for violations of this chapter, or rules promulgated under this chapter, shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund. If the director determines that a person, firm or corporation has not complied with this chapter, or the rules promulgated under this chapter, the director shall identify appropriate corrective actions. The director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The director may, through a formal compliance schedule, allow all or part of the value of the assessed civil penalties to apply toward correction of the deficiencies.

(2) Nothing in this section requires the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

History.
I.C., § 25-238, as added by 2005, ch. 44, § 1, p. 172.

Compiler's Notes. Former § 25-238, which comprised S.L. 1953, ch. 244, § 5, p. 375, was repealed by S.L. 1973, ch. 39, § 2.

CHAPTER 4

LIVESTOCK DISEASE CONTROL — TUBERCULOSIS

SECTION.
25-402. Compensation for destroyed cattle or other animals.

25-402. Compensation for destroyed cattle or other animals. — When cattle, other bovidae, captive cervidae, captive antilocapridae, or camelidae are destroyed on account of tuberculosis as herein provided, compensation may be paid to the owner of such animals as provided by law; and, provided further, that in no case shall the state pay more than the difference between the appraised value of the animals less any federal indemnity and salvage value.

History.
1923, ch. 158, § 3, p. 231; am. 1927, ch. 55, § 1, p. 69; am. 1929, ch. 245, § 1, p. 500; I.C.A., § 24-403; am. 1941, ch. 107, § 1, p. 190; am. 1993, ch. 14, § 1, p. 55; am. 2006, ch. 93, § 1, p. 267.

Compiler's Notes. The 2006 amendment, by ch. 93, rewrote this section, which formerly read: "When cattle, other bovidae, captive cervidae, captive antilocapridae, or camelidae are destroyed on account of tuberculosis as herein provided, compensation may be paid to the owner of such animals as provided by law; and, provided further, that in no case shall the state pay more than twenty-five dollars ($25.00) for a grade animal nor more than fifty dollars ($50.00) for a registered purebred animal and in no case shall the indemnity paid the owner by the state exceed one-third (1/3) the difference between appraised value and salvage value of the animals destroyed."

CHAPTER 6

BANG'S DISEASE

SECTION.
25-606. Sale of reactors for slaughter — Payments to owners.
25-610. Branding of positive reactors — Revoking accreditation of veterinarians for noncompliance.
SECTION.
25-613. Vaccination method of control.
25-613A. Official vaccination against brucellosis required — Penalty.
25-616. Penalty for violations.

25-606. Sale of reactors for slaughter — Payments to owners. — The owner of cattle or other animals which have shown a positive reaction to the brucellosis test shall sell such reactors under the direction of the department at a public auction market for immediate slaughter at a public slaughtering establishment where federal or state post mortem inspection is maintained; or the department may authorize such slaughter upon the owner's property or other place under the direction of said department. After such sale and slaughter the board of examiners is authorized to pay such owner in accordance with section 25-614A, Idaho Code. No compensation shall be made until said owner complies with the rules and regulations of the department. Proof of destruction is required. Post mortem reports will be accepted as proof of slaughter.

History.
1939, ch. 150, § 6, p. 267; am. 1978, ch. 156, § 1, p. 344; am. 1988, ch. 114, § 6, p. 205; am. 1993, ch. 13, § 6, p. 49; am. 2003, ch. 106, § 1, p. 333.

25-610. Branding of positive reactors — Revoking accreditation of veterinarians for noncompliance. — It shall further be the duty of each veterinarian in the state of Idaho, upon the receipt of such brucellosis test chart from the laboratory, to brand clearly or have branded in his presence in accordance with the U.S. department of agriculture's publication entitled "brucellosis eradication: uniform methods and rules, effective

October 1, 2003," and place an official brucellosis reactor tag in the left ear of any animals which show a positive reaction to the test in accordance with the code of federal regulation definition for a reactor. A statement that such reactors have been so branded will be made on the said chart and a copy mailed to the department within forty-eight (48) hours after receipt of said chart. A copy of any brucellosis test chart which does not show positive reactors shall also be mailed to the department within forty-eight (48) hours after receipt of said chart. Failure on the part of any veterinarian authorized by law to make blood tests, appraise reactors, vaccinate cattle or other animals, or issue quarantines shall be cause for revocation of accreditation if he fails to comply with all provisions of this law, and such veterinarian shall no longer be allowed to perform any duties for the state of Idaho until he has been reinstated.

History.
1939, ch. 150, § 10, p. 267; am. 1988, ch. 114, § 8, p. 205; am. 1993, ch. 13, § 10, p. 49; am. 2006, ch. 216, § 1, p. 651.

Compiler's Notes. The 2006 amendment, by ch. 216, in the first sentence, substituted "in accordance with the U.S. department of agriculture's publication entitled 'brucellosis eradication: uniform methods and rules, effective October 1, 2003'" for "with a letter 'B' not less than three (3) inches high, upon the left jaw."

25-613. Vaccination method of control. — (1) The owner of any cattle who has such cattle vaccinated for protection against brucellosis shall have such cattle vaccinated by a veterinarian who is licensed and accredited in the state of Idaho or vaccinated by state or federal regulatory personnel.

(2) The director shall designate in rules the vaccine to be utilized, the vaccinal dose to be administered, age range of cattle that may be vaccinated, the method for identification of vaccinated cattle and the form and contents of reports to be made of cattle vaccinated.

(3) No person, firm, or corporation shall sell, give away, or in any manner place in the hands of any owner or caretaker of cattle any brucellosis vaccine, and only licensed and accredited veterinarians, and state or federal regulatory personnel, may inject brucellosis vaccine into any cattle.

History.
1939, ch. 150, § 13, p. 267; am. 1988, ch. 114, § 11, p. 205; am. 1993, ch. 13, § 13, p. 49; am. 2002, ch. 102, § 1, p. 277.

25-613A. Official vaccination against brucellosis required — Penalty. — (1) All female cattle in the state of Idaho shall be officially vaccinated for protection against brucellosis except as provided in subsection (2) of this section. "Officially vaccinated" shall mean a bovine female animal vaccinated against brucellosis in accordance with section 25-613, Idaho Code, under the supervision of a federal or state veterinary official with age limits prescribed by the department, with a vaccine approved by the department, and permanently identified as such a vaccinate and reported at the time of vaccination to the department or appropriate federal agency cooperating in the eradication of brucellosis.

(2) Female cattle which have not been officially vaccinated shall not be utilized for breeding or dairy purposes. Such cattle may be shipped directly to slaughter, placed in recognized feedlots within the state to be finish fed for

slaughter or may be shipped out of the state of Idaho to a state that will accept them as nonvaccinated cattle. The department may require that female cattle which have not been officially vaccinated be uniquely identified as nonvaccinates and may specify in rules identification requirements, methods for identification, requirements for feedlot facilities, entry of cattle into the feedlot, removal of cattle from the feedlot, and recordkeeping requirements for feedlots which desire to finish feed nonvaccinated female cattle.

(3) Female cattle which have not been officially vaccinated may enter the state of Idaho from a state that does not require vaccination. Such cattle shall only be destined for feedlots approved by the director or to other locations at the discretion and under the oversight of the director. Such cattle that are to be utilized for breeding or dairy purposes must be vaccinated upon arrival at a feedlot or other facility approved by the director pursuant to the rules of the department. Female cattle, imported pursuant to the provisions of this subsection, which are eighteen (18) months of age or older (as evidenced by the loss of the first pair of temporary incisors) shall be tested negative for brucellosis to an official brucellosis test prior to being vaccinated.

(4) The director of the department or his designee may grant a hearing to any persons, under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, as to whether an exception should be made to the provisions of this section. An appeal may be taken from the decision of the director or his designee under the provisions of chapter 52, title 67, Idaho Code.

(5) Any person who shall possess or own in this state or acquire within this state any cattle contrary to the provisions of this section shall be subject to the provisions of section 25-616, Idaho Code. The department also may order that when animals are found not to be in compliance with the provisions of chapter 2, title 25, Idaho Code, and chapter 6, title 25, Idaho Code, that they be slaughtered, removed from the state, or placed in a feedlot approved by the director.

History.
I.C., § 25-613A, as added by 1980, ch. 148, § 1, p. 316; am. 1983, ch. 95, § 1, p. 208; am. 1986, ch. 102, § 3, p. 288; am. 1993, ch. 216, § 9, p. 587; am. 2002, ch. 102, § 2, p. 277.

25-616. Penalty for violations. — (1) Any person, firm, or corporation who shall fail to do or perform, or who shall not permit another to do or perform, any act which he or it is required to do or perform under the provisions of this chapter, or who shall in any manner interfere with the compliance of the provisions of this chapter by any officer or representative of the department, veterinary services or commissioners, or who shall refuse to present or restrain any cattle or other animals for the purpose of identifying, testing, inspecting, examining, vaccinating, or branding pursuant to the provisions of this chapter, or who shall remove any eartag from any brucellosis reactor, or who shall remove the eartag from any animal tested, identified or vaccinated for brucellosis and place such tag on or in the ear of another animal, or place a vaccination tag in the ear of an

unvaccinated animal is guilty of a misdemeanor. Upon conviction, violators are subject to a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each offense, or by imprisonment in the county jail for a period not to exceed six (6) months.

(2) Any person violating the provisions of this chapter or rules promulgated under this chapter may be assessed a civil penalty by the department or its agent of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each offense. Persons against whom civil penalties are assessed are liable for reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person charged has been given notice and an opportunity for a hearing pursuant to the provisions of chapter 52, title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this chapter may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code. Moneys collected for violations of this chapter or rules promulgated under this chapter shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund. If the director determines that a person has not complied with this chapter or the rules promulgated under this chapter, the director shall identify appropriate corrective actions. The director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The director may, through a formal compliance schedule, allow all or part of the value of the assessed civil penalties to apply toward correction of the deficiencies.

(3) Nothing in this section requires the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

History.
1939, ch. 150, § 16, p. 267; am. 1980, ch. 148, § 2, p. 316; am. 1986, ch. 102, § 4, p. 288; am. 1988, ch. 114, § 14, p. 205; am. 1993, ch. 13, § 17, p. 49; am. 2002, ch. 102, § 3, p. 277.

CHAPTER 9

TAYLOR GRAZING ACT PREFERENCES

25-901. Grazing preference appurtenant to base property.

A.L.R. Construction and application of Taylor Grazing Act (43 U.S.C.S. §§ 315 et seq.) and regulations promulgated thereunder. 71 A.L.R. Fed. 2d 197.

25-902. Continuing right to grazing preference.

A.L.R. Construction and application of Taylor Grazing Act (43 U.S.C.S. §§ 315 et seq.) and regulations promulgated thereunder. 71 A.L.R. Fed. 2d 197.

25-903. Interference with grazing right.

A.L.R. Construction and application of Taylor Grazing Act (43 U.S.C.S. §§ 315 et seq.) and regulations promulgated thereunder. 71 A.L.R. Fed. 2d 197.

CHAPTER 11

STATE BRAND BOARD

SECTION.
25-1103. State brand inspector — Appointment, salary, bond.
25-1104. Officers, deputies and assistants.
25-1106. Duties of inspector and deputy brand inspectors as law enforcement officers.
25-1122. Ownership and transportation certificate.
SECTION.
25-1145. Renewal of brands.
25-1146. Sales and transfers of brands.
25-1160. Brand inspection fees.
25-1174. Hearing for claims to livestock proceeds account.

25-1103. State brand inspector — Appointment, salary, bond. — The state board shall appoint the state brand inspector who shall be a nonclassified state employee and who shall serve at the pleasure of such board and the salary of such officer shall be fixed by such board within the limits of any appropriation available therefor.

The state brand inspector shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

The state brand inspector and personnel of the state brand inspector's office shall be employed by the Idaho state police to serve under the direction of the state board in carrying out the duties and responsibilities of the state board.

The state brand inspector shall have supervision over the employees and other persons necessary in carrying out the functions of the state board.

For administrative purposes, the state brand inspector and personnel of the state brand inspector's office shall be governed by the policies and rules of the state of Idaho and the Idaho state police concerning personnel disciplinary matters.

History.
1943, ch. 70, § 2, p. 147; am. 1947, ch. 88, § 2, p. 149; am. 1971, ch. 136, § 15, p. 522; am. and redesig. 1988, ch. 75, § 4, p. 111; am. 2012, ch. 27, § 1, p. 84.

Compiler's Notes. The 2012 amendment, by ch. 27, added the last three paragraphs.

Cross Reference. Idaho state police, § 67-2901 et seq.

25-1104. Officers, deputies and assistants. — The state brand inspector, with the approval of the state brand board, and within the limits of any appropriation made available for such purposes, shall appoint, fix the compensation, determine the tenure of office, and prescribe the duties and powers of four (4) district supervisors. The employment of other officers, deputies, and assistants as may be necessary for the performance of the duties of his office shall be subject to the provisions of chapter 53, title 67, Idaho Code. The state brand inspector shall station deputies and assistants in such localities as he shall deem advisable for the performance of his duties, and the sheriff and his deputies in the counties of the state may

perform the duties of ex officio brand inspectors under the guidelines set forth by the state brand board and state law. When the sheriff or his deputies act in the capacity of ex officio brand inspector as provided herein, they shall collect all brand inspection fees and other fees as provided by law and remit the same to the state brand inspector. Compensation for the sheriff and his deputies when acting as ex officio brand inspectors may be fixed by contract between the state brand board and the sheriff in accordance with section 31-3101, Idaho Code.

History.
1943, ch. 70, § 3, p. 147; am. 1947, ch. 88, § 3, p. 149; am. 1970, ch. 125, § 1, p. 298; am. 1983, ch. 112, § 1, p. 240; am. 1985, ch. 108, § 1, p. 211; am. and redesig. 1988, ch. 75, § 5, p. 111; am. 2001, ch. 38, § 2, p. 71.

25-1106. Duties of inspector and deputy brand inspectors as law enforcement officers. — The state brand inspector and deputy brand inspectors shall also have power and the duty to enforce all of the laws of the state for the identification, inspection and transportation of livestock and sheep and all laws of the state designed or intended to prevent the theft of livestock and sheep and shall have all of the authority and powers of peace officers vested in the director of the Idaho state police, with general jurisdiction throughout the state.

The state brand inspector shall give special consideration to reducing the loss of livestock and sheep by theft and to that end may inspect and cause inspections to be made outside the state of Idaho of livestock and sheep transported or driven from the state of Idaho, and shall also coordinate the efforts of all other law enforcement officials and peace officers in the apprehension and conviction of persons who have stolen livestock, sheep, hides, pelts, or carcasses of livestock.

History.
1943, ch. 70, § 6, p. 147; am. 1977, ch. 134, § 2, p. 289; am. and redesig. 1988, ch. 75, § 7, p. 111; am. 2000, ch. 469, § 77, p. 1450; am. 2012, ch. 27, § 2, p. 84.

Compiler's Notes. The 2012 amendment, by ch. 27, substituted "deputy brand inspectors" for "deputies" in the section heading and for "his deputies" in the first sentence of the first paragraph.

Cross Reference. Idaho state police, § 67-2901 et seq.

25-1122. Ownership and transportation certificate. — (1) The owner or owners of any horses, mules or asses desiring to transport them within the state for any purpose other than sale or trade, may, upon request to the state brand inspector, be issued an ownership and transportation certificate, which certificate shall be issued in lieu of the required brand inspection certificate or other written permit for each horse, mule or ass to be transported.

(2) An ownership and transportation certificate may be used by the owner or owners of a horse, mule or ass for identification purposes and as prima facie proof of ownership of any animal described by such a certificate.

(3) The ownership and transportation certificate shall be valid as long as the horse, mule or ass described therein remains under the ownership of the person or persons to whom the certificate is issued.

(4) The ownership and transportation certificate of a horse, mule or ass

must accompany the animal for which it is issued at all times while the animal is in transit.

(5) Each ownership and transportation certificate of a horse, mule or ass shall identify the particular animal by color, markings, sex, age and where applicable by brand, registration number, tattoo or other marks as provided for by regulation of the state brand board.

(6) There shall be a fee in an amount to be set by the state brand board, not to exceed thirty-five dollars ($35.00), for issuance of each ownership and transportation certificate, which fee shall be in addition to any brand inspection certificate or other written permit which may be requested by the owner or owners of a horse, mule or ass under other provisions of law.

(7) Upon any change of ownership of a horse, mule or ass for which an ownership and transportation certificate has been issued, the former owner or owners may transfer the certificate to the new owner or owners upon payment of a fee to be set by the state brand board, not to exceed thirty-five dollars ($35.00) per certificate.

(8) The state brand board may, under such terms and conditions as it deems necessary to protect ownership of horses, mules and asses, provide by regulation that ownership and transportation certificates may be used in transportation of horses, mules or asses to and from points outside of the state of Idaho, and may provide that similar certificates from other states may be used for proof of ownership of horses, mules or asses entering Idaho.

History.
I.C., § 25-1402A, as added by 1975, ch. 23, § 3, p. 36; am. 1987, ch. 61, § 6, p. 109; am. and redesig. 1988, ch. 75, § 14, p. 111; am. 2011, ch. 55, § 1, p. 119.

Compiler's Notes. The 2011 amendment, by ch. 55, substituted "thirty-five dollars ($35.00)" for "twenty-five ($25.00)" in subsections (6) and (7).

25-1145. Renewal of brands. — (1) On July 1, 2011, and at the end of each recording period of an original application pursuant to section 25-1144, Idaho Code, and at the end of each successive period thereafter on the first day of July, the recording of every brand in the office of the state brand inspector shall be renewed upon application for such renewal by the owner. The fee of the state brand inspector for filing each such renewal application shall be not more than one hundred dollars ($100) and it shall be the duty of the state brand inspector to furnish without further or other charge one (1) certified copy of the certificate of such brand to the owner thereof upon his request, and for each additional certified copy the state brand inspector shall be paid a reasonable fee as determined by the state brand board not to exceed one dollar and fifty cents ($1.50) for the additional certified copy. The fee for recording each renewal shall be paid coincident with the filing of the application therefor.

(2) Each application for the renewal and the record of renewal of each brand shall be made in the same manner as is provided by law for the filing of an original application for the recording of a brand.

(3) If an application for the renewal of any brand shall not be made and the fee therefor paid within the period of six (6) months after the expiration date for such renewal, then such brand may be allotted by the state brand inspector to any other person who shall apply therefor.

History.
1919, ch. 116, § 2, p. 403; C.S., § 1923; I.C.A., § 24-1007; am. 1933, ch. 173, § 2, p. 314; am. 1937, ch. 135, § 4, p. 216; am. 1939, ch. 78, § 1, p. 135; am. 1949, ch. 160, § 2, p. 346; am. 1955, ch. 31, § 1, p. 50; am. 1973, ch. 168, § 14, p. 339; am. 1974, ch. 47, § 2, p. 1093; am. 1987, ch. 61, § 3, p. 109; am. and redesig. 1988, ch. 75, § 24, p. 111; am. 1994, ch. 101, § 2, p. 229; am. 2006, ch. 198, § 1, p. 613; am. 2011, ch. 55, § 2, p. 119.

Compiler's Notes. The 2006 amendment, by ch. 198, substituted "seventy-five dollars ($75.00)" for "fifty dollars ($50.00)" in subsection (1).

The 2011 amendment, by ch. 55, in subsection (1), substituted "July 1, 2011" for "July 1, 1995" near the beginning of the first sentence and substituted "one hundred dollars ($100)" for "seventy-five dollars ($75.00)" near the beginning of the second sentence.

25-1146. Sales and transfers of brands. — Any brand recorded in accordance with the requirements of this chapter shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. Instruments of writing evidencing any such sale, assignment or transfer shall be acknowledged as deeds to real estate are now required to be, and shall be recorded in the office of the state brand inspector in a book to be by said officer kept for that purpose, which shall be properly indexed. The recording of such instruments in said office shall have the same force and effect as to third parties, as the recording of instruments affecting real estate, and the acknowledgment of the same shall have the same force and effect as the acknowledgment of deeds to real estate, and certified copies of the record of any such instrument, duly acknowledged, may be introduced in evidence the same as is now provided for certified copies of instruments affecting real estate. The fee of the state brand inspector for recording the writings evidencing each such sale, assignment or transfer shall be fifty dollars ($50.00).

History.
1905, p. 352, § 11; reen. R.C., § 1231; am. 1911, ch. 217, § 5, p. 697; reen. C.L., § 1231; C.S., § 1924; I.C.A., § 24-1008; am. 1937, ch. 135, § 5, p. 216; am. 1949, ch. 160, § 3, p. 346; am. 1951, ch. 108, § 3, p. 253; am. 1973, ch. 168, § 15, p. 339; am. 1987, ch. 61, § 4, p. 109; am. and redesig. 1988, ch. 75, § 25, p. 111; am. 2000, ch. 79, § 2, p. 166; am. 2011, ch. 55, § 3, p. 119.

Compiler's Notes. The 2011 amendment, by ch. 55, substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" at the end of the section.

25-1160. Brand inspection fees. — (1) The maximum fee which shall be charged by the state brand inspector and his deputies for brand inspection shall be:

(a) One dollar and twenty-five cents ($1.25) for each head of cattle;

(b) One dollar and fifty cents ($1.50) for each head of horses, mules and asses.

(2) A minimum fee of twenty dollars ($20.00) shall be charged by the state brand inspector and his deputies for each brand inspection certificate issued, whether for cattle, horses, mules or asses, or a combination thereof. The minimum brand inspection fee shall apply only in those cases when a brand inspector must travel from his assigned duty post.

(3) The minimum fee for brand inspection services at any normally scheduled livestock auction sale is fifty dollars ($50.00) per day, and shall be paid by the livestock auction sale, whether or not the inspection fee received from the owners of livestock inspected equals the minimum fee. If the fees

paid by the owners of livestock inspected at the sale exceed the minimum fee, the actual amount of fees collected shall be paid, rather than the minimum amount.

(4) The fee for brand inspection services at any livestock auction sale which is not a normally scheduled livestock auction sale shall be:

(a) Eighteen dollars ($18.00) per hour for each hour that each brand inspector spends engaged in the performance of brand inspection services at the livestock auction sale;

(b) A mileage rate as established by the state board of examiners per mile per vehicle for each mile that said brand inspector(s) must travel to and from the sale from his assigned duty post.

The minimum fee, not including mileage, shall be the actual hours worked, or thirty-six dollars ($36.00) per day, or the inspection fees as set forth in subsection (1) of this section, whichever is greater.

(5) The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees. All such fees shall be paid by the owner of the cattle, horses, mules and asses and credited to the state brand account.

(6) All brand inspection fees, and all other fees required by law to be collected by the brand inspector, are due and payable at the time of inspection, but the brand board may, by rule, allow all of such fees to be paid on a schedule that requires payment at least monthly, after receiving a request for such delayed payment schedule and after such request is approved by the state brand inspector. The brand board may require a security deposit to ensure the prompt payment of all fees owed to the state. Failure to pay as required shall be cause for the brand inspector to file an action in the district court of the county wherein the inspection was made for the amount of all fees owed, plus all costs and reasonable attorney's fees associated with the action plus interest at the rate specified in section 28-22-104, Idaho Code, on the amount owed from the due date.

(7) Any brand inspector who must travel beyond the border of the state of Idaho to investigate a possible violation of this chapter is entitled to a mileage rate, as established by the state board of examiners, per mile per vehicle for each mile that the brand inspector must travel to and from his assigned duty post, and eighteen dollars ($18.00) per hour for each hour that each brand inspector spends engaged in the investigation. The minimum fee for each brand inspector, not including mileage, shall be the actual hours worked, or thirty-six dollars ($36.00) per day, or the hourly inspection fees, whichever is greater.

History.

I.C., § 25-1106A, as added by 1959, ch. 91, § 1, p. 203; am. 1969, ch. 190, § 1, p. 559; am. 1973, ch. 168, § 4, p. 339; am. 1975, ch. 23, § 1, p. 36; am. 1976, ch. 180, § 1, p. 652; am. 1977, ch. 183, § 4, p. 510; am. 1987, ch. 61, § 1, p. 109; am. and redesig. 1988, ch. 75, § 31, p. 111; am. 1993, ch. 122, § 1, p. 311; am. 1997, ch. 105, § 2, p. 246; am. 2000, ch. 80, § 1, p. 168; am. 2006, ch. 198, § 2, p. 613.

Compiler's Notes. The 2006 amendment, by ch. 198, substituted "One dollar and twenty-five cents ($1.25)" for "One dollar ($1.00)" at the beginning of subsection (1)(a); and

substituted "twenty dollars ($20.00)" for "ten dollars ($10.00)" in subsection (2).

25-1174. Hearing for claims to livestock proceeds account. — Any person claiming to be the owner of any livestock sold under the provisions of section 25-1172, Idaho Code, may claim the sale proceeds placed in the unclaimed livestock proceeds account, and the state brand inspector must inquire into such claim, and may hold a hearing for such purpose giving notice thereof to every claimant thereof at least thirty (30) days before the date set for such hearing and after such hearing if satisfied of any claimant's right thereto, must issue an order granting a certificate to that effect and upon the presentation of the certificate the state controller must draw his warrant on the treasurer for the amount without interest. If no such certificate is presented to the state controller within eighteen (18) months after the date, such money is paid into the treasury of the state of Idaho and such money shall escheat to the state and be deposited into the office of the state board of education's miscellaneous revenue fund for appropriation to public education and/or higher education programs that advance the livestock industry and agriculture in general, as recommended by the Idaho cattle foundation, inc. Such recommendation shall be given to the state board of education no later than April 15 of each year.

History.

I.C., § 25-1412, as added by 1973, ch. 168, § 20, p. 339; am. and redesig. 1988, ch. 75, § 37, p. 111; am. 1994, ch. 180, § 39, p. 420; am. 2012, ch. 151, § 1, p. 421.

Compiler's Notes. The 2012 amendment, by ch. 151, substituted "deposited into the office of the state board of education's miscellaneous revenue fund for appropriation to public education and/or higher education programs that advance the livestock industry and agriculture in general, as recommended by the Idaho cattle foundation, inc." for "apportioned to the public school fund" in the next-to-last sentence and added the last sentence.

For more on the Idaho cattle foundation, inc., see *http://www.idahocattlefoundation.org*.

Section 2 of S.L. 2012, ch. 151 provided that the act should take effect on and after July 1, 2012.

CHAPTER 21

ANIMALS RUNNING AT LARGE

25-2118. Animals on open range — No duty to keep from highway.

Open Range.

In wrongful death action by relatives of motorcyclist who was killed after he struck calf on highway, summary judgment was properly granted to property owners. Owners were entitled to immunity since the highway where collision occurred was outside of any city, village, or herd district and, thus, was considered open range. Moreland v. Adams, 143 Idaho 687, 152 P.3d 558 (2007).

Owners of domestic animals are not liable or negligent when the animals cause a highway collision in "open range" or when the animals are "lawfully on any highway." Arguello v. Lee, Case No. CV-06-485-E-BLW, 2008 U.S. Dist. LEXIS 117103 (D. Idaho Oct. 8, 2008).

25-2119. Owner or possessor of animal not liable for animal on highway.

Analysis

Lawfully on highway.
Open range.
Questions for the jury.

Lawfully on Highway.

Owners of domestic animals are not liable or negligent when the animals cause a highway collision in "open range" or when the animals are "lawfully on any highway." Arguello v. Lee, Case No. CV-06-485-E-BLW, 2008 U.S. Dist. LEXIS 117103 (D. Idaho Oct. 8, 2008).

Open Range.

In wrongful death action by relatives of motorcyclist who was killed after he struck calf on highway, summary judgment was properly granted to property owners. Owners were entitled to immunity since the highway where collision occurred was outside of any city, village, or herd district and, thus, was considered open range. Moreland v. Adams, 143 Idaho 687, 152 P.3d 558 (2007).

Questions for the Jury.

Even if an accident occurs in a herd district, and lawful conditions are not present, the animal owner is not strictly liable; rather, the doctrine of res ipsa loquitur supplies an inference that the animal owner was negligent, but that inference can be rebutted, and when properly placed at issue by the parties, the issues of lawful presence, inference of negligence, and rebuttal of the inference are questions for the trier of facts. Thus, even though the court had determined that the subject land was a herd district, the question of liability had to be left to the jury. Arguello v. Lee, Case No. CV-06-485-E-BLW, 2008 U.S. Dist. LEXIS 117103 (D. Idaho Oct. 8, 2008).

CHAPTER 24

HERD DISTRICTS

25-2402. Petition and requirements for district.

Cited in: Arguello v. Lee, Case No. CV-06-485-E-BLW, 2008 U.S. Dist. LEXIS 117103 (D. Idaho Oct. 8, 2008).

Open Range.

In wrongful death action by relatives of motorcyclist who was killed after he struck calf on highway, summary judgment was properly granted to property owners. Owners were entitled to immunity since the highway where collision occurred was outside of any city, village, or herd district and, thus, was considered open range. Moreland v. Adams, 143 Idaho 687, 152 P.3d 558 (2007).

CHAPTER 25

IDAHO HORSE BOARD

SECTION.
25-2505. Assessments — Collection.
SECTION.
25-2510. Referendum for horse owners.

25-2505. Assessments — Collection. — (1) There is hereby levied and imposed upon all horses an assessment of one dollar ($1.00) per head to be paid by the owner. The assessment shall increase to three dollars ($3.00) per head if a referendum held as provided in section 25-2510(1), Idaho Code, results in a majority vote favoring the three dollar ($3.00) per head assessment.

(2) The assessment levied and imposed in this section shall be collected on all brand inspections completed on horses in the state of Idaho. Any person may purchase an Idaho horse board paid assessment card for one hundred dollars ($100) from the Idaho horse board. The paid assessment card shall be evidence to the state brand board, by and through the state brand inspector or a designated agent thereof, at the time a brand

inspection fee is collected as provided in section 25-1160, Idaho Code, that the assessment due pursuant to this section has been paid. A paid assessment card shall be valid for a period of one (1) year from the date of purchase.

(3) The state brand inspector shall collect the assessment in addition to, at the same time, and in the same manner as the fee charged for state brand inspections. The assessment so collected belongs to and shall be paid to the Idaho horse board, either directly or later by remittance together with a report detailing collection of the assessment. The board shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the board and the inspector.

History.
I.C., § 25-2505, as added by 1987, ch. 214, § 1, p. 457; am. 2000, ch. 312, § 2, p. 1049; am. 2006, ch. 202, § 1, p. 618.

Compiler's Notes. The 2006 amendment, by ch. 202, in subsection (1), substituted "one dollar" for "three dollars" in the first sentence, substituted "increase to three dollars per head" for "revert to one dollar" and "favoring the three dollar per head assessment" for "opposing the three dollar assessment" in the second sentence, and deleted the last sentence, which formerly read: "A reversion to a one-dollar ($1.00) assessment shall be effective on the date the director of the department of agriculture announces, as provided in section 25-510, Idaho Code, that the referendum resulted in a majority vote opposing the three dollar ($3.00) assessment"; and added the last two sentences in subsection (2).

25-2510. Referendum for horse owners. — (1) A referendum may be held at the discretion of the horse board to determine if horse owners favor an increase from one dollar ($1.00) to three dollars ($3.00) in the mandatory assessment prescribed in section 25-2505, Idaho Code. The question shall be made available to all horse owners who had a brand inspection the year prior to the referendum. Horse owners who have been issued a lifetime brand inspection after July 1, 2004, are also eligible to participate in the referendum and may do so by requesting a ballot from the Idaho horse board. The Idaho horse board shall publish notice of the referendum once a week for four (4) consecutive weeks, with the last notice being published one (1) week prior to the referendum, in a newspaper of general circulation in each county in the state. The notice shall set forth the process and procedures for voting. Any horse owner eligible to vote in the referendum, and who wishes to vote, shall contact the Idaho horse board for an official ballot as set forth in the notice. Voting on the referendum shall be open for thirty (30) days. Voting shall be by secret ballots upon which the words "Do you favor an increase from one dollar ($1.00) to three dollars ($3.00) in the mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the referendum vote is in favor of the mandatory assessment of three dollars ($3.00), the provisions of section 25-2505, Idaho Code, shall be extended indefinitely or until such time that the horse board deems it necessary to hold another referendum on the issue. If a majority of the referendum vote is against the three dollar ($3.00) assessment, the assessment shall remain at one dollar ($1.00). If the referendum receives a majority vote in favor of the increase, the assessment shall be increased to

three dollars ($3.00) on the date the director of the department of agriculture announces the results of the referendum.

(2) After five (5) years from the effective date of the referendum required in subsection (1) of this section, and every five (5) years thereafter, a referendum on the continuation of the mandatory assessment to fund the Idaho horse board may be held at the petition of horse owners, or at the request of the Idaho horse board. The question shall be submitted to all horse owners who paid an assessment the year before the referendum and by owners who hold a lifetime brand inspection issued since July 1, 1993. The question shall be submitted by secret ballots upon which the words, "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the question which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory assessment, all of the provisions of chapter 25, title 25, Idaho Code, shall continue. If a majority of the referendum vote is against continuing the mandatory assessment, the assessment imposed in section 25-2505, Idaho Code, shall cease to be mandatory on the date the director of the department of agriculture announces the results of the referendum vote. The procedures necessary to initiate a referendum under this subsection are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such a referendum signed by ten percent (10%) or more of horse owners who have had a brand inspection, in either of the two (2) immediate past years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho horse board.

(3) Any referendum held pursuant to subsections (1) and (2) of this section shall be conducted as follows:

(a) Any referendum must be supervised by the Idaho department of agriculture.

(b) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(c) Notice of any referendum must be given by the Idaho horse board in the manner set forth in subsection (1) of this section. The ballots must be prepared by the Idaho horse board and be made available to eligible owners. Returned ballots shall be delivered to the Idaho department of agriculture, main office.

(d) The Idaho horse board shall pay the costs of any referendum.

History.

I.C., § 25-2510, as added by 1993, ch. 133, § 2, p. 328; am. 1997, ch. 39, § 1, p. 73; am. 2000, ch. 312, § 1, p. 1049; am. 2001, ch. 183, § 7, p. 613; am. 2006, ch. 202, § 2, p. 618.

Compiler's Notes. The 2006 amendment, by ch. 202, in subsection (1), in the first sentence, substituted "A referendum may be held at the discretion of the horse board" for "Within three (3) years from July 1, 2000, a referendum shall be held," in the second sentence, substituted "made available" for "submitted," in the third sentence, substituted "July 1, 2004" for "July 1, 2000," inserted the fourth through seventh sentences, in the next-to-last sentence, deleted "provided in

section 25-505, Idaho Code" following the first occurrence of "assessment," and substituted "shall remain at one dollar" for "shall revert to one dollar," and in the last sentence, added the proviso, and the language increasing the assessment; and in subsection (3)(c), substituted the subsection reference for "determined by it" and "be made available" for "forwarded."

CHAPTER 26

EXTERMINATION OF WILD ANIMALS AND PESTS IN COUNTIES

SECTION.

25-2612A. Duties and powers of the state animal damage control board.

25-2612A. Duties and powers of the state animal damage control board. — (1) There is hereby created a state animal damage control board. The chairman of the Idaho sheep and goat health board shall be a voting member and serve as the chairman of the state animal damage control board which shall have such duties and powers relating to the prevention and control of damage caused by predatory animals and other vertebrate pests, including threatened or endangered wildlife, within the state of Idaho as are established by federal or state law, federal or state rule or regulation, or county ordinance. It is hereby made the duty of the state animal damage control board to coordinate and give general direction to programs to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health or safety; and also to facilitate, coordinate or conduct such investigations, experiments or tests as deemed necessary to determine, demonstrate and promulgate the best methods of predatory animals and other vertebrate pest control. In carrying out these duties, the board may cooperate with federal, state, county, city and private agencies, organizations or individuals; provided, however, that the authority of this board is not to supersede the state fish and game department or the responsible federal agency in the utilization of the funds of those two (2) agencies in their conduct of similar work within the state of Idaho, but the board shall cooperate and work with these two (2) agencies. Prevention and control of predatory animals and other vertebrate pests does not include the payment of compensation for damages.

(2) In addition to the chairman, the state animal damage control board shall consist of a member appointed by the president of the Idaho cattle association, the director of the state department of agriculture, the director of the state department of fish and game, and the chairman of the board of directors of each of the five (5) animal damage control districts.

(3) The state animal damage control board shall have as its primary duties the coordination of the control efforts of the five (5) animal damage control districts; the establishment of general policies for the control programs; the establishment of annual priorities for control efforts; and the assignment or distribution of moneys made available to the board from any source. All contracts or agreements for providing prevention and control services which involve an expenditure of moneys from the state animal

damage control board shall be in writing and shall be maintained as a part of the official records of the board.

(4) The Idaho sheep and goat health board shall provide staff, administrative and fiscal services for the animal damage control board.

History.
1951, ch. 250, § 2, p. 527; am. 1971, ch. 136, § 12, p. 522; am. 1974, ch. 18, § 98, p. 364; am. 1985, ch. 63, § 3, p. 125; am. 1986, ch. 212, § 1, p. 546; am. and redesig. 1997, ch. 116, § 2, p. 289; am. and redesig. 1998, ch. 205, § 3, p. 726; am. 2012, ch. 117, § 25, p. 321.

Compiler's Notes. The 2012 amendment, by ch. 117, substituted "Idaho sheep and goat health board" for "board of sheep commissioners" in subsection (1) and "Idaho sheep and goat health board" for "state board of sheep commissioners" in subsection (4).

CHAPTER 27

IDAHO COMMERCIAL FEED LAW

SECTION.
25-2701. Title.
25-2702. Enforcing official.
25-2703. Definitions.
25-2704. Registration.
25-2705. Labeling.
25-2706. Inspection fees and reports. [Repealed.]
25-2707. Adulteration.
25-2708. Misbranding.
25-2709. Inspection, sampling, analysis.
25-2710. Rules, standards, definitions.
25-2711. "Stop sale, use, or removal" orders.
25-2712. Prohibited acts.
25-2713. Penalties for violations.
25-2714. Publications.
25-2715. Cooperation with other entities.
25-2716. Severability.
25-2717. Use of funds received.
25-2718 — 25-2728. [Amended and Redesignated.]

25-2701. Title. — This chapter shall be known as the "Idaho Commercial Feed Law."

History.
1953, ch. 243, § 1, p. 366; am. and redesig. 2006, ch. 57, § 1, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered this section from § 25-2715 and substituted "chapter" for "act."

25-2702. Enforcing official. — This chapter shall be administered by the director of the department of agriculture of the state of Idaho, hereinafter referred to as the "director."

History.
1953, ch. 243, § 2, p. 366; am. 1974, ch. 18, § 160, p. 364; am. and redesig. 2006, ch. 57, § 2, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered this section from § 25-2716 and substituted "chapter" for "act."

25-2703. Definitions. — When used in this chapter:

(1) The term "animal remedy" means any drug, combination of drugs, pharmaceutical, proprietary medicine, veterinary biologics, or combination of drugs and other ingredients, other than for food or cosmetic purposes, which is prepared or compounded for any animal use except man, or materials other than food intended to affect the structure or any function of the body of animals other than man. This term does not include medicated feeds.

(2) The term "brand name" means any word, name, symbol or device, or

any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) The term "commercial feed" means all materials or combination of materials which are distributed or intended for distribution for use as feed, or for mixing in feed for poultry and animals other than man except:

(a) Unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(b) Seeds mixed and planted as such mixture, grown and harvested as one (1) crop and processed as one (1) mixture when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(c) All hay, except commercially dehydrated legumes and grasses and when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(d) Whole or ground straw, stover, silage, cobs, husks, hulls, wet or pressed beet pulp, pea screenings and beet discard molasses when not mixed with other materials and when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(e) Live, whole or unprocessed animals when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(f) Animal remedies when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(g) Individual mineral substances when not mixed with another material and when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(h) Certain processing byproducts or production waste, identified by the director in rule, without further processing, received by the end user directly from the food processor when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

The director, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities, and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed with other materials, and are not adulterated according to the provisions of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code.

(4) The term "contract feeder" means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined, all or in part, by feed consumption, mortality, profits, or amount or quality of product.

(5) The term "customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch

of which is manufactured according to the specific instructions of the final purchaser, end user or consumer. Customer-formula feed does not include commercial feeds which are used as ingredients in other commercial feed or are offered for retail or further distribution.

(6) The term "department" means the Idaho department of agriculture.

(7) The term "director" means the director of the Idaho department of agriculture or the director's authorized agent.

(8) The term "distribute" means to offer for sale, sell, exchange or barter commercial feeds in or into this state; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(9) The term "distributor" means any person who distributes.

(10) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

(11) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(12) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(13) The term "labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrapper, or accompanying such commercial feed. This includes statements and promotion on company websites or other internet based customer interfaces.

(14) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(15) The term "medicated feed" means any feed which contains drug ingredients intended or presented for the cure, mitigation, treatment, or prevention of disease in animals other than man or which contains drug ingredients intended to affect the structure or any function of the body of animals other than man.

(16) The term "mineral" means a naturally occurring, homogeneous inorganic solid substance, essential to the nutrition of animals, having a definite chemical composition and characteristic crystalline structure, color and hardness.

(17) The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(18) The term "official sample" means a sample of commercial feed taken by the director or an authorized agent in accordance with the provisions of section 25-2709, Idaho Code.

(19) The term "percent" or "percentage" means percentage by weight.

(20) The term "person" includes an individual, partnership, corporation, firm, association and agent.

(21) The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

(22) The term "pet food" means any commercial feed prepared and distributed for consumption by dogs and cats.

(23) The term "pharmaceutical" means any product prescribed for the treatment or prevention of disease for veterinary purposes, including vaccines, synthetic and natural hormones, anesthetics, stimulants or depressants.

(24) The term "product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(25) The term "purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(26) The term "purchaser" means a person who takes by purchase.

(27) The term "registrant" means that person, manufacturer, guarantor, or distributor who registers a product or products according to the provisions of section 25-2704, Idaho Code.

(28) The term "sell" or "sale" includes exchange.

(29) The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

(30) The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(31) The term "ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(32) The term "veterinary biologics" means any biologic product used for veterinary purposes, including, but not limited to, antibiotics, antiparasiticides, growth promotants and bioculture products.

(33) Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular.

History.

1953, ch. 243, § 3, p. 366; am. 1957, ch. 100, § 1, p. 174; am. 1971, ch. 343, § 1, p. 1335; am. 1976, ch. 61, § 1, p. 209; am. 1987, ch. 129, § 1, p. 260; am. 1993, ch. 12, § 1, p. 38; am. and redesig. 2006, ch. 57, § 3, p. 168; am. 2012, ch. 89, § 1, p. 245.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered this section from § 25-2717; rewrote the section heading which formerly read: "Definitions of words and terms"; added present subsection (1) and redesignated the remaining subsections; substituted "27-2707, Idaho Code, or misbranded within the meaning of section 27-2708, Idaho Code" for "25-2721, Idaho Code" in present subsections (3)(a) and the second paragraph in subsection (3)(h); added "when not adulterated within the meaning of section 25-2707, Idaho Code, or misbranded within the meaning of section 25-2708, Idaho Code" to the end of present subsections (3)(b), (c) and (d); added present subsections (3)(e) to (h); substituted "exchange or barter commercial feeds in or into this state" for "barter, or otherwise supply commercial feeds" in present subsection (8); added present subsections (15) and (16); substituted "25-2709" for "25-2723" in present subsection (18); added present subsection (23); substituted "25-2704" for "25-2718" in present subsection (27); and added present subsections (32) and (33).

The 2012 amendment, by ch. 89, in subsection (3), deleted "except when used as a feed additive" following "Animal remedies" in paragraph (f) and substituted "Certain processing byproducts or production waste, identified by the director in rule" for "High moisture food processing waste containing more than fifty percent (50%) moisture content" in paragraph (h); in subsection (5), added "end user or consumer" at the end of the existing sentence and added the last sentence; added the last sentence in subsection (13); deleted subsection (32), defining "tonnage only distributer", and renumbered former subsections (33) and (34) as present subsections (32) and (33).

25-2704. Registration. — (1) Each commercial feed except customer-formula feed shall be registered annually by the person who manufactures or distributes feed into or within the state of Idaho before being offered for sale, sold, or otherwise distributed in or into this state. It is the responsibility of each manufacturer or distributor of a commercial feed to ensure that those commercial feeds being distributed into or within the state of Idaho are properly registered by the manufacturer or distributor prior to distribution.

(2) The application for registration shall be submitted to the director on forms furnished by the department of agriculture, and shall be accompanied by a nonrefundable fee established by the director in rule not to exceed one hundred dollars ($100).

(3) The application for registration shall also be accompanied by a label describing the product, unless such label has not been altered since the last registration of the product. A label shall continue in effect unless it is canceled or changed by the registrant or unless canceled by the department of agriculture pursuant to subsection (7) of this section. The department may review a label at any time during the registration year, regardless of registration status, for compliance with this act. Should the department find that a label is not in compliance with this act after registration has been issued, the department may cancel registration of the product. Provided however, that no registration shall be canceled until the registrant shall have been given opportunity to amend the label within thirty (30) days of receipt of notice of intent to refuse or cancel registration in order to comply with the requirements of this chapter, or be given notice and opportunity for a hearing pursuant to the provisions of chapter 52, title 67, Idaho Code.

(4) All fees paid to the department of agriculture provided for in this section shall be paid to the state treasury, and placed in the commercial feed and fertilizer fund. Upon approval by the director a copy of the registration shall be furnished to the applicant. All registrations expire on September 30 of each year. If an application for registration renewal provided for in this section is not postmarked before November 1 of any one (1) year, a penalty of ten dollars ($10.00) per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration is issued.

(5) A distributor shall not be required to register any commercial feed which is already registered under the provisions of this chapter by another person provided the commercial feed is distributed in its original package or container or, if the commercial feed is distributed in bulk, the integrity of the original product is maintained and labeled with the registrant's original label or a copy of the registrant's original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a commercial feed may be permitted provided satisfactory evidence is submitted showing that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(7) The director is empowered to refuse registration of any application not in compliance with all provisions of this chapter and to cancel any registration when it is subsequently found to be in violation of any provision of this

chapter or when the director has satisfactory evidence that the registrant has used fraudulent or deceptive practices in attempted evasion of the provisions of this chapter or rules thereunder.

Provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to amend their application within thirty (30) days of receipt of notice of intent to refuse or cancel registration in order to comply with the requirements of this chapter or be given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(8) If a product is found being offered for sale, sold, or otherwise distributed into or within Idaho prior to registration, the department is authorized to assess a penalty of twenty-five dollars ($25.00) on each product in addition to the annual registration fee as provided in this section.

History.

1953, ch. 243, § 4, p. 366; am. 1955, ch. 251, § 1, p. 559; am. 1971, ch. 343, § 2, p. 1335; am. 1974, ch. 50, § 1, p. 1103; am. 1993, ch. 12, § 2, p. 38; am. and redesig. 2006, ch. 57, § 4, p. 168; am. 2012, ch. 89, § 2, p. 245.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2718; redesignated former subsections a. to d. as (1) to (4) and added subsections (5) and (6); in subsection (1), deleted "type of" following "Each", inserted "annually", "into or", and "or into" in the first sentence, inserted "nonrefundable" twice in the second sentence, substituted "subsection (4)" for "subsection (d)" in the third sentence, and added "If an application for registration renewal provided for in this section is not postmarked before November 1 of any one (1) year, a penalty of ten dollars ($10.00) per product shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration is issued" as the last sentence; rewrote present subsection (2) which formerly read: "A distributor shall not be required to register any brand of commercial feed which is already registered under the provisions of this chapter by another person"; substituted "rules" for "regulations" near the end of the introductory paragraph of present subsection (4); rewrote the second paragraph in subsection (4) which formerly read: "Provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the director."

The 2012 amendment, by ch. 89, divided former subsection (1) into present subsections (1) to (4) and redesignated the subsequent subsections accordingly; added the last sentence in subsection (1); substituted "fee established by the director in rule not to exceed one hundred dollars ($100)" for "fee of five dollars ($5.00), except that those feeds sold in packages of ten (10) pounds or less shall be registered for a nonrefundable fee of twenty-five dollars ($25.00)" in subsection (2); in subsection (3), added "The application for registration" at the beginning, updated an internal reference in the second sentence, and added the last three sentences; and deleted former subsection (5) which read, "Any person distributing commercial feed into or within Idaho to an Idaho registrant or an Idaho tonnage-only distributor must be an Idaho registrant or an Idaho tonnage-only distributor."

25-2705. Labeling. — A commercial feed shall be labeled as follows:

(1) A commercial feed, except a customer-formula feed, offered for sale or sold or otherwise distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form, a label bearing the following information:

(a) A quantity statement specifying the net weight (may be stated parenthetically in metric units in addition to the required avoirdupois), or net volume (liquid or dry). If appropriate, unit count may be used.

(b) The product name and the brand name, if any, under which the commercial feed is distributed.

(c) The guaranteed analysis stated in such terms as the director, by rule, determines is required to advise the user of the composition of the feed or

to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods, such as the methods published by the association of official analytical chemists.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed: provided that the director, by rule, may permit the use of a collective term for a group of ingredients which perform a similar function, or the director may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the director finds that such statement is not required in the interest of consumers.

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(f) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director may require, by rule, as necessary for their safe and effective use.

(g) Such precautionary statements as the director, by rule, determines are necessary for the safe and effective use of the commercial feed.

(2) Product sold in bulk may include the label with shipment of the commercial feed, to be provided to the consumer upon delivery.

(3) A customer-formula feed shall be accompanied by a label invoice, delivery slip, or other shipping document bearing the following information:

(a) Name and address of the manufacturer.

(b) Name and address of the purchaser.

(c) Date of delivery.

(d) The product name and net weight (may be stated parenthetically in metric units in addition to the required avoirdupois), net volume (liquid or dry) of each commercial feed and other ingredients used in the mixture.

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the director may require, by rule, as necessary for their safe and effective use.

(f) The directions for use and precautionary statements as required by rule.

(g) If a drug-containing product is used:

(i) The purpose of the medication (claim statement).

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rule.

History.

1953, ch. 243, § 5, p. 366; am. 1993, ch. 12, § 3, p. 38; am. and redesig. 2006, ch. 57, § 5, p. 168; am. 2012, ch. 89, § 3, p. 245.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2719; redesignated the subsections; inserted "A quantity statement specifying" and "or net volume (liquid or dry). If appropriate, unit count may be used" in present subsection (1)(a); substituted "rule" for "regulation" in present subsections (1)(c), (d), (f), (g) and (2)(e), (f) and (g)(ii); and substituted "net volume (liquid or dry) of each commercial feed and other ingredients used in the mixture" for "of each commercial feed and the guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and the maximum percentage of crude fiber" in present subsection (2)(d).

The 2012 amendment, by ch. 89, added subsection (2) and redesignated former subsection (2) as (3).

25-2706. Inspection fees and reports. [Repealed.]

Repealed by S.L. 2012, ch. 89, § 4, effective July 1, 2012.

History.
1953, ch. 243, § 6, p. 366; am. 1955, ch. 240, § 1, p. 538; am. 1974, ch. 18, § 162, p. 364; am. 1974, ch. 50, § 2, p. 1103; am. 1981, ch. 298, § 1, p. 618; am. 1993, ch. 12, § 4, p. 38; am. 1994, ch. 30, § 1, p. 47; am. and redesig. 2006, ch. 57, § 6, p. 168.

25-2707. Adulteration. — No person shall distribute an adulterated commercial feed. A commercial feed shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health, but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under the provisions of this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder other than one which is:

(a) A pesticide chemical in or on a raw agricultural commodity; or

(b) A food additive.

(3) If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 721 of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder.

(6) If it is, or it bears or contains any new animal drug which is unsafe within the meaning of section 512 of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder.

(7) If any valuable constituent has been in whole or part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(8) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(9) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is clearly and prominently stated on the label.

(10) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the director to assure that the drug meets the requirements of this chapter as to safety. In promulgating such regulations, the director shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, as amended, unless the director determines that they are not appropriate to the conditions which exist in this state.

(11) If it contains viable noxious weed seeds or other weed seeds in amounts exceeding the limits which the director shall establish by rule.

(12) If it consists, in whole or in part, of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed.

(13) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(14) If it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

(15) If its container is composed, in whole or in part, of any poisonous or deleterious substances which may render the contents injurious to health.

(16) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 402 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

History.

1953, ch. 243, § 7, p. 366; am. 1993, ch. 12, § 5, p. 38; am. and redesig. 2006, ch. 57, § 7, p. 168; am. 2012, ch. 89, § 5, p. 245.

Compiler's Notes. Sections 402, 408, 409, 512, and 721 of the federal food, drug, and cosmetic act, referred to in this section, are compiled as 21 U.S.C.S. §§ 342, 346a, 348, 360b, and 379e, respectively.

The 2006 amendment, by ch. 57, renumbered the section from § 25-2721; redesignated the subsections; substituted "section 721" for "section 706" in present subsection (5); in present subsection (11), inserted "noxious weed seeds or other" and deleted "or regulation" at the end; and added subsections (12) to (16).

The 2012 amendment, by ch. 89, inserted "as amended" near the end of subsection (10) and updated federal references in subsections (14) and (16).

25-2708. Misbranding. — No person shall distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling or advertisements are false or misleading in any particular.

(2) If it is distributed under the name of another feed.

(3) If its container is not labeled as required in section 25-2705, Idaho Code, and in rules prescribed under this chapter.

(4) If it purports to be, or is represented as, a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by rule by the director.

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(6) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the director determines to be, and by rules prescribes as necessary in order fully to inform purchasers as to its value for such uses.

History.

1953, ch. 243, § 8, p. 366; am. 1993, ch. 12, § 6, p. 38; am. and redesig. 2006, ch. 57, § 8, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2722; redesignated the subsections; substituted "or advertisements are" for "is" in present subsection (1); substituted "25-2705" for "25-2719" in present subsection (3); and substituted "rule" for "regulation", "rules" for "regulations" and "director" for "commissioner" throughout the section.

25-2709. Inspection, sampling, analysis. — (1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized:

(a) To enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds, and

(b) To inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein.

The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under the provisions of this chapter. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(2) A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection.

(3) If the office or employee making inspection of a factory, warehouse or

other establishment has obtained a sample or samples in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the inspector/sampler shall give to the owner, operator or agent in charge a receipt describing any sample or samples obtained.

(4) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

(5) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in subsection (18) of section 25-2703, Idaho Code, and obtained and analyzed as provided for in this section.

(6) If the owner of any factory, warehouse, or establishment described in subsection (1) of this section, or authorized agent, refuses to admit the director or an authorized agent to inspect in accordance with subsections (1) and (7) of this section, the director is authorized to obtain from any state court of competent jurisdiction a warrant directing such owner or agent to submit the premises described in such warrant to inspection.

(7) For the enforcement of this chapter, the director or a duly authorized agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine and make copies of records relating to distribution of commercial feeds.

(8) The results of all analyses of official samples shall be forwarded by the director to the registrant and to the purchaser. When the inspection and analysis of an official sample indicate a commercial feed has been adulterated or misbranded and upon request by the registrant or purchaser within thirty (30) days following the receipt of the analysis the director shall furnish to the registrant a portion of the sample concerned.

History.

1953, ch. 243, § 9, p. 366; am. 1974, ch. 18, § 163, p. 364; am. 1993, ch. 12, § 7, p. 38; am. and redesig. 2006, ch. 57, § 9, p. 168; am. 2012, ch. 89, § 6, p. 245.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2723; redesignated the subsections; in present subsection (3), substituted "subsection (18) of section 25-2703" for "paragraph (o) of section 25-2717" and "this section" for "section 25-2723, Idaho Code"; in present subsection (4), substituted "subsection (1)" for "subsection a." and "subsections (1) and (5)" for "subsections a. and e."; inserted "and make copies of" in subsection (5).

The 2012 amendment, by ch. 89, added present subsections (2) and (3) and redesignated former subsections (2) through (6) as present subsections (4) through (8).

25-2710. Rules, standards, definitions. — The director is hereby charged with the enforcement of this chapter, and after due publicity and due public hearing is empowered to promulgate and adopt such reasonable rules as may be necessary to carry into effect the full intent and meaning of this chapter, including the establishment of fees for services. The director is hereby empowered to adopt rules establishing definitions for commercial feeds and such other rules as may be necessary for the enforcement of any provision of this chapter.

History.

1953, ch. 243, § 10, p. 366; am. 1974, ch. 18, § 164, p. 364; am. and redesig. 2006, ch. 57, § 10, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2724; substituted "rules" for "regulations" and "this chapter" for "this act" throughout the section; in the first sentence, deleted "and regulations" following "reasonable rules" in the first sentence; and added "including the establishment of fees for services" at the end.

25-2711. "Stop sale, use, or removal" orders. — (1) In the event the department finds that commercial feed is being offered for sale in violation of this chapter or rules promulgated under this chapter, the department may issue and enforce a written or printed "stop sale, use, or removal" order to the distributor, owner or custodian of the commercial feed and hold the commercial feed, or order it held, at a designated place until the law has been complied with and the commercial feed is released in writing by the department, or the violation has been otherwise legally disposed of by written authority. Unless the department grants a written extension, the owner or custodian of any commercial feed that has been issued a "stop sale, use, or removal" order shall remedy the violation within thirty (30) days. The department shall release the commercial feed so withdrawn when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

(2) Any lot of commercial feed not in compliance with the provisions of this chapter, or rules promulgated under this chapter, shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of the provisions of this chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state: provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with the provisions of this chapter.

History.

1953, ch. 243, § 11, p. 366; am. 1974, ch. 18, § 165, p. 364; am. 1993, ch. 12, § 8, p. 38; am. and redesig. 2006, ch. 57, § 11, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2725; rewrote the former section heading which read: "Detained commercial feeds"; redesignated subsections a. and b. as (1) and (2); rewrote subsection (1) which formerly read: "'Withdrawal from sale or distribution' order. When the director or an authorized agent has reasonable cause to believe a commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, the director may issue and enforce a written or printed 'withdrawal from sale or distribution' order warning the distributor not to dispose of the feed in any manner until written permission is given by the director or the court. The director shall release the commercial feed so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within thirty (30) days, the director shall begin proceedings for condemnation"; and in present subsection (2), deleted "Condemnation and confiscation" from the beginning and inserted "or rules promulgated under this chapter".

25-2712. Prohibited acts. — Acts including, but not limited to, the following acts and the causing thereof within the state of Idaho are hereby prohibited:

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded.

(2) The adulteration or misbranding of any commercial feed.

(3) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which are adulterated within the meaning of section 25-2707, Idaho Code.

(4) The failure or refusal to register products in accordance with the provisions of section 25-2704, Idaho Code.

(5) The failure to label products in accordance with the provisions of section 25-2705, Idaho Code.

(6) The failure to pay inspection fees and file reports as required by section 25-2706, Idaho Code.

(7) The reuse of bags or totes used for commercial feeds, including customer formula feeds, that are not appropriately cleaned. A person that intends to reuse bags or totes must document their cleanout procedures.

(8) The removal or disposal of a commercial feed in violation of an order under section 25-2711, Idaho Code.

History.
I.C., § 25-2712, as added by 2006, ch. 57, § 12, p. 168.

25-2713. Penalties for violations. — (1) Any person convicted of violating any of the provisions of this chapter, or the rules promulgated under this chapter, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said director or a duly authorized agent in performance of their duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500) for the first violation, and not more than one thousand five hundred dollars ($1,500) for a subsequent violation. In all prosecutions under the provisions of this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the director shall be accepted as prima facie evidence of the composition.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars ($10,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the director is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the director has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the

violation is alleged by the department to have occurred. Moneys collected for violation of a rule shall be remitted to the feed and fertilizer account.

(3) Nothing in this chapter shall be construed as requiring the director or a duly authorized representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when the director believes that the public interest will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the director reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the director.

(5) The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rules promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

History.
1953, ch. 243, § 12, p. 366; am. 1974, ch. 18, § 166, p. 364; am. 1993, ch. 12, § 9, p. 38; am. and redesig. 2006, ch. 57, § 13, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, renumbered the section from § 25-2726; redesignated former subsections a. to e. as (1) to (5); substituted "promulgated under this chapter" for "and regulations issued thereunder" in present subsection (1); in present subsection (2), substituted "rules" for "regulations", "ten thousand dollars ($10,000)" for "five hundred dollars ($500)", and "attorney's fees'" for "attorney fees" in the first sentence, inserted "chapter 52, title 67, Idaho Code" at the end of the third sentence, and deleted "or regulation" following "rule" in the last sentence; and in present subsection (5) deleted "or regulation" following "rules" and substituted "this chapter" for "the chapter."

25-2714. Publications. — The director shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person and the information shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.
1953, ch. 243, § 13, p. 336; am. 1974, ch. 18, § 167, p. 364; am. 1990, ch. 213, § 20, p. 480; am. and redesig. 2006, ch. 57, § 14, p. 168.

Compiler's Notes. The 2006 amendment, by ch. 57, redesignated this section which was formerly compiled as § 25-2727.

25-2715. Cooperation with other entities. — The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, private associations, and commercial feed manufacturers in order to carry out the purpose and provisions of this chapter.

History.
I.C., § 25-2728, as added by 1993, ch. 12, § 10, p. 38; am. and redesig. 2006, ch. 57, § 15, p. 168.

Compiler's Notes. Former § 25-2715 was amended and redesignated as § 25-2701 by S.L. 2006, ch. 57, § 1.

The 2006 amendment, by ch. 57, redesignated this section which was formerly compiled as § 25-2728.

25-2716. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.
I.C., § 25-2716, as added by 2006, ch. 57, § 16, p. 168.

Compiler's Notes. Former § 25-2716 was amended and redesignated as § 25-2702 by S.L. 2006, ch. 57, § 2.

25-2717. Use of funds received. — All moneys received by the director from the enforcement of this chapter including, but not limited to, registration of feeds or feed ingredients, inspection fees and moneys collected for violation(s) of this chapter or rules promulgated under this chapter, shall be paid into the state treasury and placed in the "commercial feed and fertilizer fund." Moneys in the commercial feed and fertilizer fund are continuously appropriated for the purposes of carrying out the provisions of this chapter.

History.
I.C., § 25-2717, as added by 2006, ch. 57, § 17, p. 168.

Compiler's Notes. Former § 25-2717 was amended and redesignated as § 25-2703 by S.L. 2006, ch. 57, § 3.

25-2718. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2718 was amended and redesignated as § 25-2704 by S.L. 2006, ch. 57, § 4.

25-2719. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2719 was amended and redesignated as § 25-2705 by S.L. 2006, ch. 57, § 5.

25-2720. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2720 was amended and redesignated as § 25-2706 by S.L. 2006, ch. 57, § 6 and, subsequently, was repealed by S.L. 2012, ch. 89, § 4, effective July 1, 2012.

25-2721. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2721 was amended and redesignated as § 25-2707 by S.L. 2006, ch. 57, § 7.

25-2722. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2722 was amended and redesignated as § 25-2708 by S.L. 2006, ch. 57, § 8.

25-2723. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2723 was amended and redesignated as § 25-2709 by S.L. 2006, ch. 57, § 9.

25-2724. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2724 was amended and redesignated as § 25-2710 by S.L. 2006, ch. 57, § 10.

25-2725. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2725 was amended and redesignated as § 25-2711 by S.L. 2006, ch. 57, § 11.

25-2726. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2726 was amended and redesignated as § 25-2713 by S.L. 2006, ch. 57, § 13.

25-2727. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2727 was amended and redesignated as § 25-2714 by S.L. 2006, ch. 57, § 14.

25-2728. [Amended and Redesignated.]

Compiler's Notes. Former § 25-2728 was amended and redesignated as § 25-2715 by S.L. 2006, ch. 57, § 15.

CHAPTER 28

DOGS

25-2801. County dog license tax.

A.L.R. State and local regulation of operation of dog breeding and kennel facilities. 77 A.L.R.6th 393.

25-2805. Dogs running at large — Vicious dogs — Penalty.

Liability of Landlord.

Landlord had no premises liability or general negligence duty to persons who were attacked by tenant's dog. Landlord had no

knowledge of any dangerous propensities of the dog, the attack appeared to have been provoked, and attack only after the victims climbed the fence which confined the dog to the rented property. Boots v. Winters, 145 Idaho 389, 179 P.3d 352 (Ct. App. 2008).

CHAPTER 29

BEEF PROMOTION

SECTION.
25-2907. Assessments — Collection.
SECTION.
25-2908. Disbursements. [Repealed.]

25-2907. Assessments — Collection. — (1) There is hereby levied and imposed upon all cattle an assessment of not more than fifty cents (50¢) per head, to be paid by the owner. Any person may submit a written request for a refund of the assessment, or any portion thereof, to the council within ninety (90) calendar days of the assessment. The council shall make the requested refunds on a calendar quarterly basis. Any refund request that is received by the council less than fifteen (15) days from the end of the calendar quarter shall be paid at the end of the next quarter.

(2) The assessment imposed by this section shall be collected each time a change in ownership of cattle occurs.

(3) The state brand inspector shall collect state or other beef promotion assessments in addition to, at the same time and in the same manner as the fee charged for the state brand inspection. Such assessment so collected belongs to and shall be paid to the Idaho beef council, either directly or later by remittance together with a report. The council shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the council and the inspector.

(4) In the event the federal beef promotion and research act is no longer in effect:

(a) The Idaho beef council shall have the authority to increase the assessment provided for in subsection (1) of this section to not more than one dollar and fifty cents ($1.50) per head.

(b) Any person may submit a written request for a refund of the assessment, or any portion thereof, to the council within ninety (90) calendar days of the assessment. The council shall make the requested refunds on a calendar quarterly basis. Any refund request that is received by the council less than fifteen (15) days from the end of the calendar quarter shall be paid at the end of the next quarter.

History.

1967, ch. 222, § 7, p. 670; am. 1971, ch. 104, § 1, p. 225; am. 1981, ch. 28, § 1, p. 46; am. 1984, ch. 5, § 1, p. 9; am. 1984, ch. 62, § 1, p. 111; am. 1985, ch. 249, § 1, p. 582; am. 1986, ch. 246, § 2, p. 665; am. 1997, ch. 96, § 4, p. 225; am. 2005, ch. 116, § 1, p. 376; am. 2009, ch. 77, § 1, p. 213.

Compiler's Notes. Section 2 of S.L. 2005, ch. 116 declared an emergency. Approved March 23, 2005.

The 2009 amendment, by ch. 77, in subsection (1), added the last three sentences; deleted the subsection (2)(a) designation and subsection (2)(b), which read: "When Idaho cattle leave the state permanently even though no change in ownership occurs"; in subsection (4)(a), substituted "one dollar and fifty cents ($1.50)" for "one dollar ($1.00)"; and rewrote subsection (4)(b), which formerly read: "Any person may submit a written request for a refund of a collected assessment, or any portion thereof, to the council within thirty (30) calendar days after payment of the assessment. The council shall make the refund no later than sixty (60) calendar days

after receipt of the refund request, provided the council has received the assessment from the state brand inspector."

25-2908. Disbursements. [Repealed.]

Compiler's Notes. This section, which comprised 1967, ch. 222, § 8, p. 670; am. 1971, ch. 104, § 2, p. 225; am. 1988, ch. 171, § 1, p. 302; am. 1997, ch. 96, § 5, p. 225, was repealed by S.L. 2009, ch. 77, § 2.

CHAPTER 30

FUR FARMS

SECTION.
25-3001. Fur farming deemed agricultural pursuit.

25-3001. Fur farming deemed agricultural pursuit. — It shall be lawful for any person, persons, association or corporations to engage in the business of propagating, breeding, owning or controlling domestic fur-bearing animals, which are defined as fox, mink, chinchilla, marten, fisher, muskrat, beaver, bobcat, and other fur-bearing animals the department of agriculture may designate by rule, bred and raised in captivity for the purpose of harvesting pelts or providing replacement animals to fur farms that harvest pelts as their primary activity. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, fur farmers, fur breeders, or fur ranchers; the premises within which such pursuit is conducted and domestic fur-bearing animals are raised for the purpose of harvesting pelts or providing replacement animals to fur farms that harvest pelts as their primary activity shall be deemed farms, fur farms, or fur ranches.

History.
1961, ch. 152, § 1, p. 218; am. 2006, ch. 226, § 2, p. 677.

Compiler's Notes. The 2006 amendment, by ch. 226, in the first sentence, deleted "all" preceding "other fur-bearing animals," inserted "bobcat" and deleted "karakul" and "nutria" from the defined list of animals, and substituted the language beginning "the department of agriculture" for "raised in captivity for breeding or other useful purposes"; and in the last sentence, deleted "and regulations" following "rules," and inserted "and domestic fur-bearing animals are raised for the purpose of harvesting pelts or providing replacement animals to fur farms that harvest pelts as their primary activity."

CHAPTER 31

DAIRY PRODUCTS — MARKETING

SECTION.
25-3101. Protection of dairy markets — Purpose.
25-3102. Dairy products commission — Establishment — Members.
25-3103. Definitions.
25-3104. Representative districts.
25-3107. Producer members — Nominations — Elections.
25-3109. Commission chairman — Director.
25-3111. Policies — Duties, authorities, and powers.
SECTION.
25-3112. Deposit and disbursement of funds.
25-3113. Bonds of agents and employees.
25-3114. Appointment of director — Duties — Salary.
25-3115. Office for director.
25-3116. Limit on state liability.
25-3121. Violation of this chapter — Misdemeanor — Fines.
25-3122. Referendum regarding continuance of commission.

25-3101. Protection of dairy markets — Purpose. — It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the dairy industry. Because of problems incurred in marketing the dairy products produced in this state and because this marketing has become more and more difficult in the presently available markets, it is necessary, in order to provide a profitable enterprise for the dairy industry of the state and to promote employment labor and to assist the dairymen of the state and those in the various industries dependent upon the dairymen, that additional markets be found and developed. It is the purpose of this chapter to promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the production and marketing of Idaho dairy products.

History.
1969, ch. 140, § 1, p. 435; am. 2013, ch. 176, § 1, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, substituted "this chapter" for "this act" in the last sentence.

25-3102. Dairy products commission — Establishment — Members. — (1) There is hereby created and established in the department of self-governing agencies the "Idaho dairy products commission" to be composed of nine (9) producer members, three (3) from each of the three (3) commission districts referred to in section 25-3104, Idaho Code, who shall be elected by the producers of said districts as hereinafter set forth, and they shall hold office for a term of three (3) years.

(2) The dean of the college of agriculture, university of Idaho, or his duly authorized representative, and a duly authorized representative of the Idaho milk processors association, shall be ex officio members without vote of the commission.

History.
1969, ch. 140, § 2, p. 435; am. 1974, ch. 13, § 9, p. 138; am. 2005, ch. 19, § 1, p. 56.

25-3103. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) "Commission" means the Idaho dairy products commission;

(2) To "ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human or animal consumption, industrial or medicinal uses;

(3) "Dealer" means one who handles, ships, buys, processes, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

(4) "Producer" means a person who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses;

(5) "Producer-handler" means any person who produces milk or milk fat and uses such production, or any part of it, for processing. For the purposes of this chapter, a producer-handler is a producer in any transaction which involves the delivery of unprocessed milk or milk fat produced by him or received from another producer and processed by such producer-handler;

(6) "Department" means the Idaho state department of agriculture;

(7) "Person" means and includes individuals, corporations, partnerships, trusts, associations, cooperatives and any and all other business units, devices and arrangements.

History.
1969, ch. 140, § 3, p. 435; am. 1974, ch. 13, § 10, p. 138; am. 2013, ch. 176, § 2, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, substituted "this chapter" for "this act" in the introductory paragraph and in subsection (5); added subsection designations; deleted the definition of "director"; and inserted "state" in subsection (6).

25-3104. Representative districts. — Three (3) elected commission members shall represent one (1) of the following districts:

(1) District I, which shall include the counties of Ada, Adams, Benewah, Boise, Bonner, Boundary, Canyon, Clearwater, Elmore, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington;

(2) District II, which shall include the counties of Blaine, Camas, Gooding, Jerome, Lincoln, Cassia, Minidoka and Twin Falls;

(3) District III, which shall include the counties of Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power and Teton.

History.
1969, ch. 140, § 4, p. 435; am. 2005, ch. 19, § 2, p. 56.

25-3107. Producer members — Nominations — Elections. — Producer members of the commission shall be nominated and elected by producers within the district that such producer members represent in the year in which a commission member's term shall expire. Such producer members receiving the largest number of the votes cast in the respective districts which they represent shall be elected. The election shall be by secret mail ballot and under the supervision of the department.

Nomination for candidates to be elected to the commission shall be conducted by a nominating committee. Thirty (30) days prior to the date of election, the commission shall select a nominating committee from the district, which in turn will present the names of three (3) qualified nominees; in addition thereto, producer members of the commission may be nominated by a petition of nomination signed by not less than twenty-five (25) active producers, each of whom shall reside in the district wherein the nominee resides, and the names of all such nominees nominated by petition shall be presented to the department not later than the first day of May of the year in which the election for such district is to be held.

Ballots for electing members to the commission will be mailed by the department to all eligible producers no later than May 15 in districts where elections are to be held and such ballots to be valid shall be returned postmarked no later than May 31 of the year mailed to the department.

All costs and expenses of the department shall be paid by the commission. All materials and other necessary supplies shall be provided to the department at its request.

History.
1969, ch. 140, § 7, p. 435; am. 2013, ch. 176, § 3, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, substituted "department "for "state department of agriculture" at the end of the first paragraph and near the end of the second paragraph.

25-3109. Commission chairman — Director. — The commission shall elect a chairman and may employ a director who is not a member of the commission.

History.
1969, ch. 140, § 9, p. 435; am. 2013, ch. 176, § 4, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, substituted "director "for "administrator" in the section heading and in the first sentence; deleted "Fidelity bond" from the end of the section heading; and deleted the former last two sentences which read: "The commission shall require the administrator of the commission to give a fidelity bond executed by a surety company authorized to do business in this state in favor of the commission, in such sum, and containing such terms and conditions, as the commission may prescribe. The cost of any such fidelity bond shall be paid from moneys collected pursuant to this act."

25-3111. Policies — Duties, authorities, and powers. — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of this chapter, the commission shall have the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

(b) To find new markets for dairy products and their by-products.

(c) To give, publicize and promulgate reliable information showing the value of milk, cream, and dairy products for any purpose for which they are found useful and profitable.

(d) To make public and encourage the widespread national and international use of dairy products and by-products produced in Idaho.

(e) To investigate and participate in studies of the problems peculiar to the dairy producers in Idaho.

(f) To take such action as the commission deems necessary or advisable in order to stabilize and protect the dairy industry of the state and the health and welfare of the public.
(g) To sue and be sued.
(h) To enter into such contracts as may be necessary or advisable.
(i) To employ, and at its pleasure discharge, officers, agents, attorneys and such other personnel as it deems necessary, including experts in agriculture and dairying and the publicizing of the products thereof, and to prescribe their duties and to fix their compensation.
(j) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.
(k) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity in reciprocal enforcement.
(*l*) To lease, purchase or own real or personal property deemed necessary in the administration of this chapter.
(m) To investigate and prosecute in the name of the state of Idaho violations of the provisions of this chapter or any suit or action for collection of the tax or assessment provided for in this chapter, or to protect brands, marks, brand names, trademarks or other intellectual property rights being promoted or used by the commission.
(n) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties.
(o) To incur indebtedness and carry on all business activities.
(p) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and public at all times.

History.
1969, ch. 140, § 11, p. 435; am. 1994, ch. 180, § 41, p. 420; am. 2013, ch. 176, § 5, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, combined subsections (2) and (3) and redesignated paragraphs accordingly; substituted "To employ, and at its pleasure discharge, officers, agents, attorneys and such other personnel as it deems necessary" for "To appoint and employ officers, agents and other personnel" in paragraph (2)(i); in paragraph (2)(m), inserted "investigate and", "violations of the provisions of this chapter" and "or to protect brands, marks, brand names, trademarks or other intellectual property rights being promoted or used by the commission"; and substituted "this chapter" for "this act" throughout the section.

25-3112. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

History.
I.C., § 25-3112, as added by 1988, ch. 193, § 2, p. 348; am. 1993, ch. 327, § 13, p. 1186; am. 1994, ch. 180, § 42, p. 420; am. 1996, ch. 159, § 13, p. 502; am. 2003, ch. 32, § 16, p. 115.

25-3113. Bonds of agents and employees. — The director, or any agent or employee appointed by the commission, shall be bonded to the state of Idaho in the time, form and manner as prescribed by the provisions of chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter.

History.
1969, ch. 140, § 13, p. 435; am. 2013, ch. 176, § 6, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, substituted the current section heading for the former which read: "Bond Requirements" and rewrote the section which read: "The commission may require the administrator, or any agent or employee appointed by the commission, to give a bond payable to the state of Idaho in the amount and with the security and containing the terms and conditions the commission prescribes. The cost of the bond is an administrative expense under this act."

25-3114. Appointment of director — Duties — Salary. — The commission shall appoint a director who shall devote full time to the administration of this chapter. He shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission. The director shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses.

History.
1969, ch. 140, § 14, p. 435; am. 2013, ch. 176, § 7, p. 408.
Compiler's Notes. The 2013 amendment, by ch. 176, substituted the current section heading for the former which read: "Administrator of this act — Appointment — Salary" and, in the section, substituted "director" for "administrator" twice and "this chapter" for "this act."

25-3115. Office for director. — For the convenience of the majority of those most likely to be affected in the administration of this chapter, the director, upon recommendation of the commission, shall establish and maintain an office for the director within the state of Idaho.

History.
1969, ch. 140, § 15, p. 435; am. 2013, ch. 176, § 8, p. 408.
Compiler's Notes. The 2013 amendment, by ch. 176, substituted "director" for "administrator" in the section heading and twice in the text and substituted "this chapter" for "this act."

25-3116. Limit on state liability. — All contractual expenses incurred by the commission in performing its duties and exercising its powers shall be without liability on the part of the state. All tort obligations arising out of acts and omissions of the commission are binding on the state of Idaho as, and to the extent, provided for in chapter 9, title 6, Idaho Code.

History.
1969, ch. 140, § 16, p. 435; am. 2013, ch. 176, § 9, p. 408.
Compiler's Notes. The 2013 amendment, by ch. 176, rewrote the section heading, which formerly read: "Nonliability of state" and rewrote the section which formerly read: "The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof."

25-3121. Violation of this chapter — Misdemeanor — Fines. — Any person who shall violate or aid in the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than three hundred dollars ($300) or imprisonment not to exceed ninety (90) days, or both. Fines collected for violation of this chapter shall be paid into the Idaho dairy products commission fund.

History.
1969, ch. 140, § 21, p. 435; am. 2013, ch. 176, § 10, p. 408.
Compiler's Notes. The 2013 amendment, by ch. 176, substituted "this chapter" for "this act" in the section heading and twice in the section text.

25-3122. Referendum regarding continuance of commission. — After five (5) years from the date the commission was created, a referendum may be held at the petition of the producers or at the request of the commission. The question shall be submitted by secret ballots upon which the words "For continuance of the Idaho Dairy Products Commission" and "Against continuance of the Idaho Dairy Products Commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of discontinuance of such commission shall be held within five (5) years from the date the result of the previous referendum was declared.

The referendum must be held and supervised by the department upon its receiving either of the following:

(1) A petition signed by twenty percent (20%) of the producers or two thousand (2,000) producers, whichever is less.

(2) At written request from the commission.

(3) The commission shall pay the costs of any such referendum.

The referendum shall be held, notice thereof given, expenses thereof paid and the result determined, declared and recorded in the office of the secretary of state. No hearings or district meetings shall be made prior to the referendum upon the question of determining whether such referendum should be held.

Notice of such referendum must be given by the commission in a manner determined by them. The ballots must also be prepared by the commission and forwarded to the producer members who shall return them within twenty (20) days after mailing by the commission.

History.
1969, ch. 140, § 23, p. 435; am. 2013, ch. 176, § 11, p. 408.

Compiler's Notes. The 2013 amendment, by ch. 176, substituted "department" for "department of agriculture" in the second paragraph.

CHAPTER 33

IDAHO LIVESTOCK DEALER LICENSING

SECTION.
25-3303. License required.

25-3303. License required. — Any person doing business as a livestock dealer in the state of Idaho must secure an annual license from the board. A fee of one hundred dollars ($100) shall accompany any such application for initial issuance or renewal. In addition, a fee of thirty-five dollars ($35.00) shall be paid for each authorized representative of a licensee. Such fees so received are not returnable and shall be deposited in the state brand account created in section 25-1161, Idaho Code. Upon determination that the applicant is qualified, the board shall issue a license to the applicant and all annual licenses shall terminate and become void each successive June 30th.

History.
I.C., § 25-3303, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 4, p. 395; am. 2011, ch. 55, § 4, p. 119.

Compiler's Notes. The 2011 amendment, by ch. 55, substituted "one hundred dollars ($100)" for "forty dollars ($40.00)" near the beginning of the second sentence and "thirty-five dollars ($35.00)" for "fifteen dollars ($15.00)" near the middle of the third sentence.

CHAPTER 35

ANIMAL CARE

SECTION.
25-3501. Administration.
25-3501A. Enforcement — Enforcement restrictions.
SECTION.
25-3502. Definitions.
25-3504. Committing cruelty to animals.
25-3505. Carrying in a cruel manner — Sei-

SECTION.
zure, expenses, lien.
25-3506. Exhibition of cockfights.
25-3507. Exhibition of dogfights.
25-3511. Permitting animals to go without care — Abandoned animals to be humanely destroyed.
25-3514. Chapter construed not to interfere with normal or legal practices.
SECTION.
25-3520A. Penalty for violations — Termination of rights.
25-3520B. Seizure — Costs — Forfeiture proceedings — Security deposit or bond — Disposition — Procedural guidelines.

25-3501. Administration. — The Idaho state department of agriculture, division of animal industries shall be responsible for the administration of the provisions of this chapter as they pertain to production animals and shall inform the public and animal owners concerning their legal responsibilities, and in cooperation with local law enforcement, investigate and develop cases for prosecution. Local law enforcement agencies shall be responsible for the administration of the provisions of this chapter as they pertain to companion animals and shall be authorized to call upon the division to aid in fulfillment of the requirements of this chapter and refer cases for prosecution to the appropriate authority. The foregoing shall not be construed to preclude county or local officials, acting upon their own authority, from investigating, developing cases and prosecuting violations of this chapter that occur in their jurisdiction. The cost to the department for administering the provisions of this chapter shall be borne by the citizens of this state through the appropriation of general funds for administration, personnel, travel, equipment and supplies. No provision of this chapter relating to law enforcement agencies and animal care and control agencies shall be construed to preclude the authority of agencies or entities recognized in this section.

History.
I.C., § 25-3501, as added by 1994, ch. 346, § 2, p. 1089; am. 1996, ch. 229, § 1, p. 744; am. 2006, ch. 170, § 1, p. 524; am. 2011, ch. 309, § 2, p. 877.

Compiler's Notes. The 2006 amendment, by ch. 170, inserted "Idaho state" near the beginning and added the last sentence.

The 2011 amendment, by ch. 309, inserted "as they pertain to production animals" in the first sentence and substituted "Local law enforcement agencies shall be responsible for the administration of the provisions of this chapter as they pertain to companion animal and shall be authorized to call upon the division" for "The division shall be authorized to call upon any peace officer in the state" at the beginning of the second sentence.

25-3501A. Enforcement — Enforcement restrictions. — (1) Law enforcement agencies and animal care and control agencies that provide law enforcement or animal care and control services to a municipality or county, may enforce the provisions of this chapter in that municipality or county.

(2) Animal care and control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Idaho.

(3) In cases where production animals are subject to a violation of section 25-3504, 25-3505 or 25-3511, Idaho Code, law enforcement agencies and animal care and control agencies shall not:

(a) Enforce section 25-3504, 25-3505 or 25-3511, Idaho Code, without first

obtaining an inspection and written determination from a department investigator that a violation of one (1) or more of the sections has occurred or is occurring; or

(b) Take a production animal from a production animal facility, pasture, or rangeland for a violation of section 25-3504, 25-3505 or 25-3511, Idaho Code, without first obtaining an inspection and written determination from a department investigator that such action is in the best interest of the animal.

History.
I.C., § 25-3501A, as added by 2006, ch. 170, § 2, p. 524.

25-3502. Definitions. — The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Abandon" means to completely forsake and desert an animal previously under the custody or possession of a person without making reasonable arrangements for its proper care, sustenance and shelter.

(2) "Animal" means any vertebrate member of the animal kingdom, except man.

(3) "Animal care and control agency" means any agency incorporated under the laws of this state to which a county or municipality has conferred authority to exercise the powers and duties set forth in this chapter based upon the agency's ability to fulfill the purposes of this chapter.

(4) "Companion animal" means those animals including, but not limited to, domestic dogs, domestic cats, rabbits, companion birds, and other animals commonly kept as pets.

(5) "Cruel" or "cruelty" shall mean any or all of the following:

(a) The intentional and malicious infliction of pain, physical suffering, injury or death upon an animal;

(b) To maliciously kill, maim, wound, overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, drink or shelter, cruelly beat, mutilate or cruelly kill an animal;

(c) To subject an animal to needless suffering, inflict unnecessary cruelty, drive, ride or otherwise use an animal when same is unfit;

(d) To abandon an animal;

(e) To negligently confine an animal in unsanitary conditions or to negligently house an animal in inadequate facilities; to negligently fail to provide sustenance, water or shelter to an animal.

(6) "Department" means the Idaho state department of agriculture.

(7) "Department investigator" means a person employed by, or approved by, the Idaho state department of agriculture, division of animal industries, to determine whether there has been a violation of this chapter.

(8) "Division" means the division of animal industries of the Idaho state department of agriculture.

(9) "Custodian" means any person who keeps or harbors an animal, has an animal in his care or acts as caretaker of an animal.

(10) "Malicious" or "maliciously" means the intentional doing of a wrong-

ful act without just cause or excuse, with an intent to inflict an injury or death.

(11) "Owner" means any person who has a right of property in an animal.

(12) "Person" means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, any public or private institution, the state of Idaho, or any municipal corporation or political subdivision of the state.

(13) "Pound" means a place enclosed by public authority for the detention of stray animals.

(14) "Production animal" means, for purposes of this chapter:

(a) The following animals if owned for the express purpose of producing food or fiber, or other commercial activity, in furtherance of the production of food or fiber, or other commercial activity, or to be sold for the use by another for such purpose: cattle, sheep, goats, swine, poultry, ratites, equines, domestic cervidae, camelidae, and guard and stock dogs; and

(b) Furbearing animals kept for the purpose of commercial fur production.

History.

I.C., § 25-3502, as added by 1994, ch. 346, § 2, p. 1089; am. 1996, ch. 229, § 2, p. 744; am. 2006, ch. 170, § 3, p. 524; am. 2011, ch. 309, § 3, p. 877.

Compiler's Notes. The 2006 amendment, by ch. 170, added present subsections (3) and (4) and redesignated former subsection (3) as (5); added present subsections (6) to (8) and redesignated former subsections (4) to (8) as (9) to (13); and added subsection (14).

The 2011 amendment, by ch. 309, in subsection (14), rewrote paragraph (a), which read: "The following animals if kept by the owner for the express purpose of producing food or fiber: cattle, sheep, goats, swine, poultry" and deleted former paragraph (c), which read: "Equines, domestic cervidae, and members of the camelidae family which includes llamas and alpacas."

25-3504. Committing cruelty to animals. — Every person who is cruel to any animal, or who causes or procures any animal to be cruelly treated, or who, having the charge or custody of any animal either as owner or otherwise, subjects any animal to cruelty shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Any law enforcement officer or animal care and control officer, subject to the restrictions of section 25-3501A, Idaho Code, may take possession of the animal cruelly treated, and provide care for the same, until final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code.

History.

I.C., § 18-2102, as added by 1972, ch. 336, § 1, p. 844; am. 1979, ch. 183, § 1, p. 537; am. and redesig. 1994, ch. 346, § 4, p. 1089; am. 1996, ch. 229, § 3, p. 744; am. 2006, ch. 170, § 4, p. 524; am. 2008, ch. 47, § 1, p. 119; am. 2012, ch. 262, § 1, p. 729.

Compiler's Notes. The 2006 amendment, by ch. 170, added the last sentence.

The 2008 amendment, by ch. 47, inserted the second occurrence of "who," and substituted "or who" for "and whoever" near the beginning of the sentence.

The 2012 amendment, by ch. 262, deleted "is, for every such offense, guilty of a misdemeanor and" following "subjects any animal to cruelty" in the first sentence.

Section 2 of S.L. 2008, ch. 47 declared an emergency. Approved February 27, 2008.

A.L.R. Challenges to pre- and post-conviction forfeitures and to post-conviction restitution under animal cruelty statutes. 70 A.L.R.6th 329.

25-3505. Carrying in a cruel manner — Seizure, expenses, lien. — Whoever carries or causes to be carried in or upon any vehicle or otherwise any animal in a cruel manner, or knowingly and willfully authorizes or permits it to be subjected to cruelty of any kind, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Subject to the restrictions of section 25-3501A, Idaho Code, whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle, and its contents, and deposit them in some place of custody, and must take possession of the animal and deposit it in some place of custody until final disposition of the animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code.

History.

I.C., § 18-2103, as added by 1972, ch. 336, § 1, p. 844; am. and redesig. 1994, ch. 346, § 5, p. 1089; am. 1996, ch. 229, § 4, p. 744; am. 2006, ch. 170, § 5, p. 524.

Compiler's Notes. The 2006 amendment, by ch. 170, rewrote the second and third sentences which formerly read: "Whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle, and its contents, together with the animal and deposit them in some place of custody. Any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof remains unpaid, it may be recovered, by the person incurring the same, from the owner of such animal, in an action therefor."

25-3506. Exhibition of cockfights. — (1) Every person who participates in a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

(2) Every person who knowingly advertises, promotes or organizes a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature and at which:

(a) Any controlled substance listed in section 37-2732C, Idaho Code, is present; and

(b) Any act of gambling, as defined in section 18-3801, Idaho Code, occurs;

is guilty of a felony and shall, upon conviction, be punished in accordance with the penalty provisions in section 25-3520A(3)(a), Idaho Code.

(3) Every person who knowingly advertises, promotes or organizes a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature and at which:

(a) Gaffs or other artificial or mechanical means are used to enhance pain, inflict injury or to cause death; or

(b) Any substance to enhance activity, aggressiveness or bodily energy has been administered to a gamecock;

is guilty of a misdemeanor for a first violation and shall, upon conviction, be punished in accordance with the penalty provisions of section 25-3520A(1), Idaho Code. Any person convicted of a second or subsequent violation of the provisions of this subsection is guilty of a felony and shall, upon conviction, be punished in accordance with the penalty provisions of section 25-

3520A(3)(a), Idaho Code. Each prior conviction shall constitute one (1) violation of the provisions of this subsection regardless of the number of counts involved in the conviction.

(4) Nothing in this section prohibits any customary practice of breeding or rearing game fowl, regardless of the subsequent uses of said game fowl.

History.
I.C., § 18-2104, as added by 1972, ch. 336, § 1, p. 844; am. and redesig. 1994, ch. 346, § 6, p. 1089; am. 1996, ch. 229, § 5, p. 744; am. 2012, ch. 262, § 2, p. 729.

Compiler's Notes. The 2012 amendment, by ch. 262, designated the existing provisions as subsections (1) and (4) and added subsections (2) and (3).

A.L.R. Validity, construction, and application of statutes and ordinances to prosecution for cockfighting. 69 A.L.R.6th 207.

25-3507. Exhibition of dogfights. — (1) Every person who knowingly owns, possesses, keeps, trains, buys or sells dogs for the purpose of a public or private display of combat between two (2) or more dogs in which the fighting, killing, maiming or injuring of dogs is a significant feature is guilty of a felony.

(2) Every person who knowingly advertises, promotes, organizes, participates or knowingly has a monetary interest in a public or private display of combat between two (2) or more dogs in which the fighting, killing, maiming or injuring of dogs is a significant feature is guilty of a felony.

(3) Every person who is knowingly present as a spectator at any place where preparations are being made for an exhibition of the fighting of dogs with the intent to be present at such preparations or to be knowingly present at such exhibition shall be guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

(4) Nothing in this section prohibits: demonstrations of the hunting, herding, working or tracking skills of dogs or the lawful use of dogs for hunting, herding, working, tracking or self and property protection; the use of dogs in the management of livestock or the training, raising, breeding or keeping of dogs for any purpose not prohibited by law. An exhibition of dogfighting shall not be construed to mean the type of confrontation that happens unintentionally because of a chance encounter between two (2) or more uncontrolled dogs.

History.
I.C., § 18-2105, as added by 1972, ch. 336, § 1, p. 844; am. and redesig. 1994, ch. 346, § 7, p. 1089; am. 1996, ch. 229, § 6, p. 744; am. 2008, ch. 32, § 1, p. 64.

Compiler's Notes. The 2008 amendment, by ch. 32, rewrote the section, making it a felony to affiliate with dog fighting in any way and a misdemeanor to be a spectator in any place in which dog fights take place.

A.L.R. Validity, construction, and application of criminal statutes and ordinances to prosecution for dogfighting. 68 A.L.R.6th 115.

25-3511. Permitting animals to go without care — Abandoned animals to be humanely destroyed. — Every owner, custodian or possessor of any animal, who shall permit the same to be in any building, enclosure, lane, street, square or lot of any city, county or precinct, without proper care and attention, as determined by an Idaho licensed veterinarian, or a representative of the division, shall, on conviction, be deemed guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. It shall be the duty of any law enforcement

officer or animal care and control officer, subject to the restrictions of section 25-3501A, Idaho Code, to take possession of the animal so abandoned or neglected, and care for the same until final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code. Every sick, disabled, infirm or crippled animal which shall be abandoned in any city, county or precinct, may if after due search no owner can be found therefor, be humanely destroyed, or other provision made for the animal by or on the order of such officer; and it shall be the duty of all law enforcement officers or animal care and control officers, to cause the same to be humanely destroyed, or other provision made therefor, on information of such abandonment. Subject to the restrictions of section 25-3501A, Idaho Code, such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness or neglect, is unfit for the activity it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code. If, in accordance with this section, a responsible owner cannot be found, the animal may be offered for adoption to a responsible person in lieu of destruction.

History.

I.C., § 18-2109, as added by 1972, ch. 336, § 1, p. 844; am. 1994, ch. 131, § 9, p. 296; am. and redesig. 1994, ch. 346, § 11, p. 1089; am. 1996, ch. 229, § 9, p. 744; am. 2006, ch. 170, § 6, p. 524.

Compiler's Notes. The 2006 amendment, by ch. 170, rewrote the second sentence which formerly read: "And it shall be the duty of any peace officer, or officer of any incorporated association qualified as provided by law, to take possession of the animal so abandoned or neglected, and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid"; substituted "law enforcement officers or animal care and control officers" for "peace officers, or by an officer of said incorporated association" in the third sentence; in the fourth sentence, added "Subject to the restrictions of section 25-3501A, Idaho Code" at the beginning and substituted "final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code" for "it is deemed to be in a suitable condition, as determined by an Idaho licensed veterinarian or a representative of the division, to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered"; and substituted "If, in accordance with" for "If, after due process under" at the beginning of the fifth sentence.

25-3514. Chapter construed not to interfere with normal or legal practices. — No part of this chapter shall be construed as interfering with or allowing interference with:

(1) Normal or accepted veterinary practices;

(2) The humane slaughter of any animal normally and commonly raised as food, for production of fiber or equines;

(3) Bona fide experiments or research carried out by professionally recognized private or public research facilities or institutions;

(4) The humane destruction of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane destruction of animals for population control;

(5) Normal or accepted practices of animal identification and animal

husbandry as established by, but not limited to, guidelines developed and approved by the appropriate national or state commodity organizations;

(6) The killing of any animal, by any person at any time, which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(7) The killing of an animal that is vicious by an animal control officer, law enforcement officer or veterinarian;

(8) The killing or destruction of predatory animals, vermin or other animals or birds which are injuring or posing a threat to farm or privately owned animals or property, when such killing or destruction is conducted in accordance with laws and rules covering such animals;

(9) Any other exhibitions, competitions, activities, practices or procedures normally or commonly considered acceptable.

The practices, procedures and activities described in this section shall not be construed to be cruel nor shall they be defined as cruelty to animals, nor shall any person engaged in these practices, procedures or activities be charged with cruelty to animals.

History.
I.C., § 25-3514, as added by 1994, ch. 346, § 15, p. 1089; am. 2010, ch. 55, § 1, p. 103.

Compiler's Notes. The 2010 amendment, by ch. 55, at the end of subsection (2), added "or equines"; and, at the end of subsection (5), added "as established by, but not limited to, guidelines developed and approved by the appropriate national or state commodity organizations".

25-3519. Authority to enter premises and examine animals.

A.L.R. State and local regulation of operation of dog breeding and kennel facilities. 77 A.L.R.6th 393.

25-3520A. Penalty for violations — Termination of rights. — (1) Except as otherwise provided in section 25-3503 or 25-3506, Idaho Code, any person convicted for a first violation of any of the provisions of this chapter shall be punished, for each offense, by a jail sentence of not more than six (6) months or by a fine of not less than one hundred dollars ($100) or more than five thousand dollars ($5,000), or by both such fine and imprisonment.

(2) Except as otherwise provided in section 25-3503 or 25-3506, Idaho Code, any person convicted of a second violation of any of the provisions of this chapter within ten (10) years of the first conviction, shall be punished for each offense, by a jail sentence of not more than nine (9) months or a fine of not less than two hundred dollars ($200) or more than seven thousand dollars ($7,000) or both fine and imprisonment.

(3)(a) Except as otherwise provided in section 25-3503 or 25-3506, Idaho Code, any person convicted of a third or subsequent violation of any of the provisions of this chapter, except certain violations of section 25-3504, Idaho Code, as provided in paragraph (b) of this subsection, within fifteen (15) years of the first conviction, shall be guilty of a misdemeanor and punished for each offense by a jail sentence of not more than twelve (12)

months or a fine of not less than five hundred dollars ($500) or more than nine thousand dollars ($9,000) or by both fine and imprisonment.

(b) Except as provided in section 25-3503, Idaho Code, any person convicted of a third or subsequent violation who previously has been found guilty of or has pled guilty to two (2) violations of section 25-3504, Idaho Code, provided the violations were for conduct as defined by section 25-3502(5)(a), Idaho Code, within fifteen (15) years of the first conviction, shall be guilty of a felony and punished for each offense by a jail sentence of not more than twelve (12) months or a fine of not less than five hundred dollars ($500) or not more than nine thousand dollars ($9,000) or by both fine and imprisonment. All other violations of section 25-3504, Idaho Code, for conduct as defined by any other paragraphs, other than paragraph (a) of section 25-3502(5), Idaho Code, shall constitute misdemeanors and shall be punishable as provided in paragraph (a) of this subsection.

(c) Each prior conviction or guilty plea shall constitute one (1) violation of this chapter regardless of the number of counts involved in the conviction or guilty plea. Practices described in section 25-3514, Idaho Code, are not animal cruelty.

(4) If a person pleads guilty or is found guilty of an offense under this chapter, the court may issue an order terminating the person's right to possession, title, custody or care of an animal that was involved in the offense or that was owned or possessed at the time of the offense. If a person's right to possession, title, custody or care of an animal is terminated, the court may award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals, or may award the animal to a law enforcement agency or animal care and control agency. The court's award of custody or care of an animal will grant to the organization or agency the authority to determine custody, adoption, sale or other disposition of the animal thereafter.

History.

I.C., § 25-3520A, as added by 1996, ch. 229, § 14, p. 744; am. 2006, ch. 170, § 7, p. 524; am. 2012, ch. 262, § 3, p. 729.

Compiler's Notes. The 2006 amendment, by ch. 170, added subsection (4).

The 2012 amendment, by ch. 262, inserted "otherwise" preceding "provided" and inserted "or 25-3506" following "section 25-3506" in subsections (1), (2), and (3); designated the existing provisions of subsection (3) as paragraph (3)(a) and added paragraphs (3)(b) and (3)(c); in paragraph (3)(a), inserted "of any of the provisions of this chapter, except certain violations of section 25-3504, Idaho Code, as provided in paragraph (b) of this subsection" and "guilty of a misdemeanor."

A.L.R. Challenges to pre- and post-conviction forfeitures and to post-conviction restitution under animal cruelty statutes. 70 A.L.R.6th 329.

25-3520B. Seizure — Costs — Forfeiture proceedings — Security deposit or bond — Disposition — Procedural guidelines. — (1) Any person having authority to enforce this chapter, in accordance with section 25-3501 or 25-3501A, Idaho Code, who has probable cause to believe there has been a violation of section 25-3504, 25-3505, 25-3506, 25-3507, 25-3510 or 25-3511, Idaho Code, may take custody of the animal involved.

(2) If any animal is seized under this section, the owner or keeper shall be liable for the reasonable costs of the seizure and the care, keeping and

disposal of the animal. Reasonable costs shall include, but shall not be limited to, transportation, medical, board, shelter and farrier costs.

(3) If any animal is in the possession of, and being held by, a law enforcement agency or animal care and control agency pursuant to the provisions of this chapter, pending the outcome of a criminal action charging a violation of this chapter, and prior to final disposition of the criminal charge, the animal care and control agency or law enforcement agency may file a petition in the criminal case requesting that the court issue an order forfeiting the animal to the law enforcement agency or animal care and control agency. The petitioner shall serve a true copy of the petition upon the defendant.

(4) Upon receipt of a petition pursuant to subsection (3) of this section, the court shall set a hearing on the petition. The hearing shall be conducted within fourteen (14) days after the filing of the petition, or as soon as practicable. The hearing shall be limited to the question of forfeiture of the animal.

(5) At a hearing conducted pursuant to subsection (4) of this section, the petitioner shall have the burden of establishing probable cause to believe that the animal was subjected to a violation of this chapter. A prior finding of probable cause to proceed on the criminal case will create a permissive inference that probable cause exists for the forfeiture proceeding. After the hearing, if the court finds probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the defendant, within seventy-two (72) hours of the hearing, posts a security deposit or bond with the municipal or county treasurer in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, for the care of the animal for at least thirty (30) days inclusive of the day of the initial seizure and may order anticipated costs up to the time set for trial on the criminal case if requested by the petitioner. If, after the hearing, the court finds that no probable cause exists, the animal shall be returned to the owner or keeper of the animal, and the owner or keeper shall not be responsible for any costs of the seizure, care or treatment, unless the person later pleads guilty to or is found guilty of a violation of this chapter.

(6) At the end of the time for which expenses are covered by the security deposit or bond, if the person owning or keeping the animal desires to prevent disposition of the animal, the owner or keeper shall post a new security deposit or bond with the municipal or county treasurer which must be received before the expiration date of the previous security deposit or bond. The court may correct, alter or otherwise adjust the new security deposit or bond upon a motion made before the expiration date of the previous security deposit or bond, provided however, no person may file more than one (1) motion seeking an adjustment to the new security deposit or bond.

(7) If a security deposit or bond has been posted in accordance with this section, the law enforcement agency or animal care and control agency may draw from that security deposit or bond reasonable costs in keeping and caring for the animal from the date of the seizure to the date of final disposition of the animal in the criminal action.

(8) At the end of the time for which expenses are covered by the security deposit or bond, or if no security deposit or bond has been posted in accordance with this section, the law enforcement agency or animal care and control agency may determine disposition of the animal. The owner or keeper of the animal shall be liable for all unpaid reasonable costs of the care, keeping or disposal of the animal. Posting of the security deposit or bond shall not prevent the law enforcement agency or animal care and control agency from disposing of the seized or impounded animal before the expiration of the period covered by the security deposit or bond if the court orders the forfeiture of the animal or the owner relinquishes the animal.

(9) Upon resolution of the criminal action, remaining funds deposited with the municipal or county treasurer which have not, and will not be expended in the care, keeping or disposal of the animal shall be remitted to the owner or keeper of the animal.

(10) Irrespective of any other provision of this section, if in the written determination of a licensed veterinarian, the animal is experiencing extreme pain or suffering, or is severely injured or diseased, and therefore not likely to recover, it may be immediately euthanized.

(11) No proceeding under this section shall be used as a basis for a continuance or to delay the criminal case nor shall proceedings in the criminal case, other than dismissal, be used as a basis to delay or continue the forfeiture proceeding as provided for in this section. Proceedings under this section are of a civil nature and governed by the Idaho rules of civil procedure except as to limitations upon the discovery process. Due to the need to conduct any proceeding necessary under this section in an expeditious manner, and the right of any criminal defendant to avoid self-incrimination, any and all discovery requests shall be granted only under authority of the court. Discovery shall be authorized with the intent to provide the necessary information relating directly to the evidence for the probable cause proceeding. In no event shall discovery mechanisms be used to unreasonably burden the opposing party. Discovery mechanisms shall not include the deposition of any party, witness or representative, the use of interrogatories, or the demand to inspect any records outside the immediate reports and financial accountings for the animal in question.

History.
I.C., § 25-3520B, as added by 2006, ch. 170, § 8, p. 524.

A.L.R. Challenges to pre- and post-conviction forfeitures and to post-conviction restitution under animal cruelty statutes. 70 A.L.R.6th 329.

CHAPTER 36

RATITES

SECTION.
25-3601. Ratites designated livestock.
25-3602. Ratite farms placed under jurisdiction of department of agriculture.
25-3603. Application of laws relating to livestock and domestic animals.
25-3604. Rules for disease prevention.
25-3605. Inspection of ratite farms.
25-3606. Penalty for violations.
25-3607. Property rights in ratite animals.
25-3608. Severability.

25-3601. Ratites designated livestock. — It shall be lawful for any person, persons, association or corporation to engage in the business of propagating, breeding, owning or controlling domestic ratites, which are defined as cassowary, ostrich, emu and rhea. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, ratite farmers, ratite breeders or ratite ranchers; the premises within which such a pursuit is conducted shall be deemed farms, ratite farms, or ratite ranches.

History.
I.C., § 25-3501, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 24, p. 82.

25-3602. Ratite farms placed under jurisdiction of department of agriculture. — The department of agriculture and the administrator of the division of animal industries shall have administrative authority for all functions which affect the breeding, raising, producing, marketing or any other phase of the production or distribution of domestic ratites, or the products thereof.

History.
I.C., § 25-3502, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 25, p. 82.

25-3603. Application of laws relating to livestock and domestic animals. — All of the provisions of chapter 2, title 25, Idaho Code, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic ratite animals.

History.
I.C., § 25-3503, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 26, p. 82.

25-3604. Rules for disease prevention. — The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate, and enforce general and reasonable rules not inconsistent with law, for the prevention of the introduction or dissemination of diseases among domestic ratite animals of this state, and to otherwise effectuate enforcement of the provisions of chapter 2, title 25, Idaho Code, applicable to domestic ratite animals.

History.
I.C., § 25-3504, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 27, p. 82.

25-3605. Inspection of ratite farms. — The division of animal indus-

tries and any of its officers shall have the right at any time to inspect any ratite farm, and may go upon such farms or any part thereof to inspect and examine the same and any animals therein.

History.
I.C., § 25-3505, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 28, p. 82.

25-3606. Penalty for violations. — Any person, firm or corporation violating any of the provisions of chapter 2, title 25, Idaho Code, applicable to domestic ratite animals, or of the rules promulgated by the division of animal industries for the enforcement thereof, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

History.
I.C., § 25-3506, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 29, p. 82.

25-3607. Property rights in ratite animals. — Domestic ratite animals shall be, together with their offspring and increases, the subject of ownership, lien and absolute property rights, in whatever situation, location or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity.

History.
I.C., § 25-3507, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 30, p. 82.

25-3608. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.
I.C., § 25-3508, as added by 1994, ch. 72, § 1, p. 149; am. and redesig. 2005, ch. 25, § 31, p. 82.

CHAPTER 37

DOMESTIC CERVIDAE FARMS

SECTION.
25-3701. Domestic cervidae farming deemed agricultural pursuit.
25-3702. Transfer of functions from fish and game commission to department of agriculture.
25-3703. Application of laws relating to livestock and domestic animals.
25-3703A. Official permanent identification.
25-3704. Rules for registering premises and disease prevention.
25-3705. Inspection of cervidae farms.
25-3705A. Escape of domestic cervidae.
25-3705B. Wild ungulates.
25-3706. Violations — Civil — Criminal — Penalties for violations.
25-3707. Property rights in domestic cervidae.
25-3708. Fees.
25-3709. Severability.

25-3701. Domestic cervidae farming deemed agricultural pursuit. — It shall be lawful for any person, association or corporation to breed,

own or control domestic cervidae, which are defined as fallow deer (dama dama), elk (cervus elaphus) or reindeer (rangifer tarandus), but shall not include red deer (urasian cervidae) or any subspecies or hybrids thereof, and hold such animal in captivity for breeding or other useful purposes on domestic cervidae farms or ranches, provided the premises have been registered with the division of animal industries. Reindeer (rangifer tarandus) shall not be held for domestic purposes north of the Salmon River. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing, harvesting or marketing of such animals or their products by the producer or his agent shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, cervidae farmers, cervidae breeders or cervidae ranchers; the premises within which such pursuit is conducted shall be deemed farms, cervidae farms, or cervidae ranches.

History.
I.C., § 25-3501, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2004, ch. 182, § 2, p. 569.

25-3702. Transfer of functions from fish and game commission to department of agriculture. — All the functions of the fish and game commission and the department of fish and game, which affect the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestic cervidae, or the products thereof, are hereby transferred to and vested in the department of agriculture and the administrator of the division of animal industries; provided, that this act shall not limit or affect the powers or duties of the department of fish and game relating to nondomestic cervidae or the management and taking thereof, and provided further that the department of agriculture shall address the reasonable concerns of the department of fish and game respecting the domestic farming of cervidae as provided in section 36-106(e)(9), Idaho Code.

History.
I.C., § 25-3502, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2005, ch. 25, § 32, p. 82.

25-3703. Application of laws relating to livestock and domestic animals. — All of the provisions of chapters 2, 3, 4 and 6, title 25, Idaho Code, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic cervidae.

History.
I.C., § 25-3503, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2005, ch. 25, § 33, p. 82.

25-3703A. Official permanent identification. — All domestic cervidae located in Idaho shall be identified with two (2) types of official

permanent identification. At least one (1) of the official permanent identifications shall be visible from a minimum of one hundred fifty (150) feet.

History.
I.C., § 25-3703A, as added by 2004, ch. 182, § 3, p. 569.

25-3704. Rules for registering premises and disease prevention. — The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate, and enforce general and reasonable rules not inconsistent with law, for the registration of domestic cervidae farm or ranch premises, and for the prevention of the introduction or dissemination of diseases among domestic cervidae of this state, and to otherwise effectuate enforcement of the provisions of chapters 2, 3, 4, 6 and 37, title 25, Idaho Code, applicable to domestic cervidae.

History.
I.C., § 25-3504, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2004, ch. 182, § 4, p. 569.

25-3705. Inspection of cervidae farms. — The division of animal industries and any of its officers shall have the right, at any reasonable time, to inspect any domestic cervidae farm, and may go upon such farms or any part thereof where such animals are contained to inspect and examine the same and any animals therein.

History.
I.C., § 25-3505, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2005, ch. 25, § 34, p. 82.

25-3705A. Escape of domestic cervidae. — (1) It is the duty of the owners and operators of domestic cervidae farms or ranches to:

(a) Take all reasonable actions to prevent the escape of domestic cervidae located on such farms or ranches;

(b) Ensure that perimeter fences and gates are built and maintained in a manner that will prevent the escape of domestic cervidae;

(c) Notify the division of animal industries upon the discovery of the escape of domestic cervidae; and

(d) Take reasonable actions to bring under control domestic cervidae that escape.

(2) Notwithstanding any provision of law to the contrary, the division of animal industries or its agent is authorized to take necessary actions to bring under control any domestic cervidae that have escaped the control of the owner or operator of the domestic cervidae farm or ranch where the domestic cervidae were located.

(3) Any domestic cervidae, that have escaped the control of the owner or operator of a domestic cervidae farm or ranch for more than seven (7) days, taken by a licensed hunter in a manner which complies with title 36, Idaho Code, and the rules and proclamations of the Idaho fish and game commission shall be considered a legal taking and neither the licensed hunter, the state, nor any state agency shall be liable to the owner for killing the escaped domestic cervidae.

History.
I.C., § 25-3705A, as added by 2004, ch. 182, § 5, p. 569.

Liability for Taking.
Under the terms of subsection (3), licensed hunters, the state, and all state agencies are immune for the taking/killing of escaped domestic cervidae, so long as the taking/killing complies with the terms of this section. Rammell v. State, — Idaho —, — P.3d —, 2012 Ida. LEXIS 193 (Sept. 14, 2012).

25-3705B. Wild ungulates. — The Idaho department of fish and game shall cooperate with the division of animal industries and the owner or operator of any domestic cervidae farm or ranch, where any wild ungulates are found within the perimeter fences of the domestic cervidae farm or ranch, in the development of a site specific written herd plan to determine the disposition of the wild ungulates.

History.
I.C., § 25-3705B, as added by 2004, ch. 182, § 6, p. 569.

25-3706. Violations — Civil — Criminal — Penalties for violations. — (1) Failure to comply with provisions applicable to domestic cervidae as set forth in chapters 2, 3, 4 and 6 of title 25, Idaho Code, the provisions of this chapter, or rules promulgated thereunder, shall constitute a violation. Civil penalties may be assessed against a violator as follows:

(a) A civil penalty as assessed by the department or its duly authorized agent not to exceed five thousand dollars ($5,000) for each offense;

(b) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(2) No civil penalty may be assessed against a person unless the person was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act as set forth in chapter 52, title 67, Idaho Code.

(3) If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.

(4) A person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred.

(5) Moneys collected pursuant to this section shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund.

(6) The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires.

(7) Nothing in this chapter shall be construed as requiring the director to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action.

(8) Any person, firm or corporation violating any of the provisions of chapters 2, 3, 4 and 6, title 25, Idaho Code, this chapter, or rules promulgated thereunder by the division of animal industries, applicable to domestic cervidae, shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each offense.

History.
I.C., § 25-3506, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2001, ch. 128, § 1, p. 449; am. 2002, ch. 103, § 1, p. 280.
Compiler's Notes. This section was formerly compiled as § 25-3506.

Section 2 of S.L. 2001, ch. 128 declared an emergency. Approved March 23, 2001.
Section 2 of S.L. 2002, ch. 103 declared an emergency. Approved March 19, 2002.

25-3707. Property rights in domestic cervidae. — Domestic cervidae shall be, together with their offspring and increases the subject of ownership, lien and absolute property rights, (the same as purely domestic animals) in whatever situation, location, or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity.

History.
I.C., § 25-3507, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2005, ch. 25, § 35, p. 82.

Cited in: Rammell v. State, — Idaho —, — P.3d —, 2012 Ida. LEXIS 193 (Sept. 14, 2012).

25-3708. Fees. — There is hereby imposed, on domestic cervidae, a fee, not to exceed five dollars ($5.00) per head per year and shall be due on January 1 of each year. The fee shall be used by the Idaho department of agriculture, division of animal industries, for the prevention, control and eradication of diseases of domestic cervidae, the inspection of domestic cervidae and domestic cervidae farms or ranches, and administration of the domestic cervidae program. All moneys collected under this provision shall be deposited in the livestock disease control and tuberculosis indemnity fund and used for the domestic cervidae program.

History.
I.C., § 25-3508, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2004, ch. 182, § 7, p. 569.

25-3709. Severability. — If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History.
I.C., § 25-3509, as added by 1994, ch. 73, § 1, p. 151; am. and redesig. 2005, ch. 25, § 36, p. 82.

CHAPTER 38

AGRICULTURE ODOR MANAGEMENT ACT

SECTION.
25-3801. Declaration of policy and statement of legislative intent.
25-3802. Authority and duties of the director concerning odors from agricultural operations.
25-3803. Definitions.
25-3804. Design and construction.
25-3805. First time violators — Odor management plan — Exceptions.
25-3806. Inspections — Records confidential.
25-3807. Complaints.
25-3808. Subsequent violations — Penalties.
25-3809. Agriculture odor management fund.

25-3801. Declaration of policy and statement of legislative intent. — (1) The agriculture industry is a vital component of Idaho's economy and during the normal course of producing the food and fiber required by Idaho and our nation, odors are generated. It is the intent of the legislature to manage these odors when they are generated at a level in excess of those odors normally associated with accepted agricultural practices in Idaho.

(2) Large swine operations are addressing odor management through chapter 1, title 39, Idaho Code, and the department of environmental quality's rules regulating large swine operations, and the beef cattle industry will address odor management as needed through implementation of the beef cattle environmental control act as provided for in chapter 49, title 22, Idaho Code, and rules promulgated thereunder.

(3) The Idaho department of agriculture is hereby authorized as the lead agency to administer and implement the provisions of this chapter. In carrying out the provisions of this chapter, the department will make reasonable efforts to ensure that any requirements imposed upon agricultural operations are cost-effective and economically, environmentally and technologically feasible.

History.
I.C., § 25-3801, as added by 2001, ch. 383, § 1, p. 1340; am. 2002, ch. 261, § 1, p. 781; am. 2011, ch. 227, § 2, p. 615.

Compiler's Notes. The 2011 amendment, by ch. 227, twice deleted "and poultry" following "large swine" in subsection (2).

Section 6 of S.L. 2002, ch. 261 declared an emergency. Approved March 25, 2002.

Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

Opinions of Attorney General. Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

25-3802. Authority and duties of the director concerning odors from agricultural operations. — The director of the department of agriculture is authorized to regulate odors from agricultural operations. In order to carry out its duties pursuant to the provisions of this chapter, the director of the department shall be authorized to promulgate necessary administrative rules in compliance with chapter 52, title 67, Idaho Code.

History.
I.C., § 25-3802, as added by 2001, ch. 383, § 1, p. 1340.

25-3803. Definitions. — When used in this chapter:

(1) "Accepted agricultural practices" means those management practices normally associated with agriculture in Idaho, and which should include management practices intended to control odor generated by an agricultural operation.

(2) "Agricultural animals" means those animals including, but not limited to, mink, domestic cervidae, horses and ratites raised for agricultural purposes.

(3) "Agricultural operations" means those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within section 25-3801(2), Idaho Code.

(4) "Best management practices" means practices, techniques or measures which are determined by the department to be a cost-effective and practicable means of managing odors generated on an agricultural operation to a level associated with accepted agricultural practices.

(5) "Department" means the Idaho department of agriculture.

(6) "Director" means the director of the Idaho department of agriculture.

(7) "Liquid waste system" means those wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system.

(8) "Livestock" means cattle, sheep, swine and poultry.

(9) "Manure" means animal excrement that may also contain bedding, spilled feed or soil.

(10) "Modified" means structural changes and alterations to the livestock operation which would require increased wastewater storage or containment capacity or such changes which would increase the amount of manure entering wastewater storage containment facilities.

(11) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard.

(12) "Nutrient management standard" means the 1999 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590, and all subsequent amendments, additions or other revisions thereto, or other equally protective standard approved by the director.

(13) "Odor" means the property or quality of a substance that stimulates or is perceived by the sense of smell, or by other means as the department may determine by rule, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness and health risks.

(14) "Odor management plan" means a site specific plan approved by the director to manage odor from an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices.

(15) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties.

(16) "Wastewater" means water containing manure which is generated on a livestock operation.

(17) "Wastewater storage and containment facilities" means wastewater storage ponds, wastewater treatment lagoons and evaporative ponds.

History.
I.C., § 25-3803, as added by 2001, ch. 383, § 1, p. 1340; am. 2002, ch. 261, § 2, p. 781.

Compiler's Notes. Section 6 of S.L. 2002, ch. 261 declared an emergency. Approved March 25, 2002.

25-3804. Design and construction. — All new or modified liquid waste systems shall be designed by licensed professional engineers, approved by the director of the department of agriculture for compliance with the provisions of this chapter, and constructed in accordance with standards and specifications either approved by the director for management of odors or in accordance with any existing relevant memorandums of understanding with the department of environmental quality. Provided however, that all persons shall submit plans and specifications for new or modified liquid waste systems to the director for approval and shall not begin construction of a liquid waste system prior to approval of plans and specifications by the director. If construction is commenced prior to receiving necessary approval, the director may order construction activities to be ceased. No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration or modification performed must be submitted by the operator to the director. If construction does not materially deviate from the plans approved by the director, a statement to that effect shall be filed by the agricultural operation with the director.

History.
I.C., § 25-3804, as added by 2001, ch. 383, § 1, p. 1340; am. 2002, ch. 261, § 3, p. 781.

Compiler's Notes. Section 6 of S.L. 2002, ch. 261 declared an emergency. Approved March 25, 2002.

25-3805. First time violators — Odor management plan — Exceptions. — (1) If it is determined by the department that an agricultural operation, not to include those operations set forth within section 25-3801(2), Idaho Code, is generating odors in excess of levels associated with accepted agricultural practices, the agricultural operation shall be deemed to have committed a first time violation of the provisions of this chapter, provided that the agricultural operation has never been determined by the department to have committed a prior violation of the provisions of this chapter. The department shall provide the owner or operator of the agricultural operation with written notice of the violation and an opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(2) The department shall require any agricultural operation determined

to have committed a first time violation of the provisions of this chapter to cooperate with the department and to develop and submit an odor management plan to the director for approval.

(3) All odor management plans shall be in writing and signed by the director of the department of agriculture and the owner or operator of the agricultural operation. Odor management plans shall designate a period of time in which the agricultural operation will be in full compliance with the plan and shall provide for periodic review by the department, no less than annually, for a period of three (3) years from the date of the plan. Failure to comply with the odor management plan shall constitute a subsequent violation of the provisions of this chapter.

(4) All approved odor management plans shall be implemented as approved by the director.

(5) If, after a reasonable period of time as determined by the department, an approved odor management plan does not reduce odor to a level associated with accepted agricultural practices, the department shall review the plan with the owner or operator of the agricultural operation and adjust the plan to meet the goals of this chapter.

(6) Odor management plans shall be designed to work in conjunction with any required nutrient management plans.

(7) An odor emission caused by an act of God or a mechanical failure shall not constitute a violation of this chapter provided that the agricultural operation from which the odor emission is emanating takes reasonable steps to promptly repair the cause of the emission.

History.
I.C., § 25-3805, as added by 2001, ch. 383, § 1, p. 1340.

25-3806. Inspections — Records confidential. — The director or his designee is authorized to enter and inspect any agricultural operation and have access to or copy any facility records deemed necessary to ensure compliance with the provisions of this chapter or required odor management plans. Prior to conducting an investigation, the department shall notify the board of county commissioners for the county in which the agricultural operation is located and the board of county commissioners may have a designee accompany the director or his designee during the inspection. All records copied or obtained by the director or his designee as a result of an inspection pursuant to this section shall be confidential private records and shall be exempt from disclosure under chapter 3, title 9, Idaho Code, except:

(1) Records otherwise deemed to be public records not exempt from disclosure pursuant to chapter 3, title 9, Idaho Code; and

(2) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to this section.

History.
I.C., § 25-3806, as added by 2001, ch. 383, § 1, p. 1340.

25-3807. Complaints. — The department shall respond to all odor complaints lodged against agriculture operations. A complaint must include the name, address and telephone number of the complainant. The response of the department may be limited to informing the complainant that an odor plan is being implemented. Complaints pursuant to this section are a public record open to public inspection and copying pursuant to chapter 3, title 9, Idaho Code.

History.
I.C., § 25-3807, as added by 2001, ch. 383, § 1, p. 1340.

25-3808. Subsequent violations — Penalties. — (1) An agricultural operation, after having been determined to have committed a first time violation of the provisions of this chapter, shall be deemed to have committed a subsequent violation if the operation:

(a) Is determined by the department to have committed a subsequent violation within a three (3) year period of time; or

(b) Failed to comply with an odor management plan developed pursuant to section 25-3805, Idaho Code.

(2) An agricultural operation, after having been determined to have committed a first time violation of the provisions of this chapter, may be deemed to have committed a subsequent violation if the director determines that the operation has failed to cooperate by failing to submit an acceptable odor management plan.

(3) Those agricultural operations determined to have committed a subsequent violation of this chapter shall be assessed a civil penalty by the department or its duly authorized agent not to exceed ten thousand dollars ($10,000) for each offense and be liable for reasonable attorney's fees and costs.

(4) Assessment of a civil penalty as provided herein may be made in conjunction with any other department administrative action and shall be based on the severity of the offense and the degree of cooperation with the department.

(5) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(6) If the department is unable to collect the civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court.

(7) Any person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(8) Moneys collected for violations shall be deposited in the state treasury and credited to the general fund.

(9) The imposition or computation of monetary penalties shall take into account the seriousness of the violation, and such other matters as justice

requires. The director shall prepare a written report setting forth the basis upon which any monetary penalty is imposed and/or computed and shall retain the report on file with the department.

History.
I.C., § 25-3808, as added by 2001, ch. 383, § 1, p. 1340; am. 2002, ch. 261, § 4, p. 781.

Compiler's Notes. Section 6 of S.L. 2002, ch. 261 declared an emergency. Approved March 25, 2002.

25-3809. Agriculture odor management fund. — There is hereby created in the state treasury a fund to be known as the agriculture odor management fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private or other sources. The department may expend such amounts as are appropriated by the legislature from the fund for research, grants, projects, programs or other expenditures.

History.
I.C., § 25-3809, as added by 2002, ch. 261, § 5, p. 781.

Compiler's Notes. Section 6 of S.L. 2002, ch. 261 declared an emergency. Approved March 25, 2002.

CHAPTER 39

IMPORTATION OR POSSESSION OF DELETERIOUS EXOTIC ANIMALS

SECTION.
25-3901. Declaration of policy and statement of legislative intent.
25-3902. Authority of the department of agriculture and the division of animal industries.
25-3903. Rules for importation or possession of deleterious exotic animals.
25-3904. Designation of deleterious exotic animals.
25-3905. Violations — Civil — Criminal — Penalties for violations.

25-3901. Declaration of policy and statement of legislative intent. — The Idaho legislature finds and declares that the agriculture industry, wildlife of the state, and the environment are all important components of Idaho's economy, and that it is in the public interest to strictly regulate the importation or possession of deleterious exotic animals up to and including prohibition of the importation or possession of such animals.

History.
I.C., § 25-3901, as added by 2003, ch. 105, § 1, p. 331.

Compiler's Notes. Section 2 of S.L. 2003, ch. 105 declared an emergency. Approved March 20, 2003.

25-3902. Authority of the department of agriculture and the division of animal industries. — The department of agriculture and the administrator of the division of animal industries are authorized and empowered to regulate or prohibit the importation or possession of any deleterious exotic animals.

History.
I.C., § 25-3902, as added by 2003, ch. 105, § 1, p. 331.

Compiler's Notes. Section 2 of S.L. 2003, ch. 105 declared an emergency. Approved March 20, 2003.

25-3903. Rules for importation or possession of deleterious exotic animals. — The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate and enforce necessary administrative rules in compliance with chapter 52, title 67, Idaho Code, for the regulation or prohibition of the importation or possession of deleterious exotic animals.

History.
I.C., § 25-3903, as added by 2003, ch. 105, § 1, p. 331.

Compiler's Notes. Section 2 of S.L. 2003, ch. 105 declared an emergency. Approved March 20, 2003.

25-3904. Designation of deleterious exotic animals. — The administrator of the division of animal industries shall, in cooperation with the director of the department of fish and game, designate by rule or order any animal, not native to Idaho, which is determined to be dangerous to the environment, livestock, agriculture, or wildlife of the state as a deleterious exotic animal.

History.
I.C., § 25-3904, as added by 2003, ch. 105, § 1, p. 331.

Compiler's Notes. Section 2 of S.L. 2003, ch. 105 declared an emergency. Approved March 20, 2003.

25-3905. Violations — Civil — Criminal — Penalties for violations. — (1) Failure to comply with the provisions of this chapter, or the rules promulgated hereunder, shall constitute a violation. Civil penalties may be assessed against a violator as follows:

(a) A civil penalty as assessed by the department of agriculture or its duly authorized agent not to exceed five thousand dollars ($5,000) for each offense;

(b) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(2) No civil penalty may be assessed against a person unless the person was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(3) If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.

(4) A person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred.

(5) Moneys collected pursuant to this section shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund.

(6) The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the

law, the economic impact of the penalty on the violator and such other matters as justice requires.

(7) Nothing in this chapter shall be construed as requiring the director of the department of agriculture to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action.

(8) Any person, firm or corporation violating any of the provisions of this chapter, or rules promulgated hereunder by the division of animal industries shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each offense.

History.
I.C., § 25-3905, as added by 2003, ch. 105, § 1, p. 331.

Compiler's Notes. Section 2 of S.L. 2003, ch. 105 declared an emergency. Approved March 20, 2003.

Cited in: State v. Korn, 148 Idaho 413, 224 P.3d 480 (2009).

CHAPTER 40

POULTRY ENVIRONMENTAL ACT

SECTION.
25-4001. Short title.
25-4002. Definitions.
25-4003. Permit required.
25-4004. Permit application.
25-4005. Existing facilities.
25-4006. Design and construction.
25-4007. Nutrient management plans.
25-4008. Inspections.
25-4009. Compliance schedules and monitoring.
25-4010. Fees and assessments to be collected.
25-4011. Designation.
25-4012. Authority to promulgate rules.
25-4013. Violations.
25-4014. Penalty for violations.

25-4001. Short title. — This chapter shall be known as the "Poultry Environmental Act."

History.
I.C., § 25-4001, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4002. Definitions. — As used in this chapter:

(1) "Administrator" means the administrator, or his designee, for the animal industries division of the Idaho department of agriculture.

(2) "Animal feeding operation" or "AFO" means a lot or facility where the following conditions are met:

(a) Poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

(b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(3) "Animal waste" or "manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(4) "Best management practices" means practices, techniques or mea-

sures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state.

(5) "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a large poultry CAFO or as a medium poultry CAFO by the terms of this chapter, or that is designated as a CAFO in accordance with section 25-4011, Idaho Code. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(6) "Department" means the Idaho department of agriculture.

(7) "Director" means the director of the Idaho department of agriculture or his designee.

(8) "Land application" means the spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes.

(9) "Land application area" means land under the control of an AFO owner or operator, whether it is owned, rented or leased, to which manure, litter or process wastewater from the production area is or may be applied.

(10) "Large poultry CAFO" means a poultry AFO that confines as many or more than the number of poultry specified in the following categories:

(a) Fifty-five thousand (55,000) turkeys;

(b) Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(d) Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system;

(e) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system; or

(f) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.

(11) "Medium poultry CAFO" means any poultry AFO which confines:

(a) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys;

(b) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(d) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system;

(e) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system; or

(f) One thousand five hundred (1,500) to four thousand nine hundred

ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system.

(12) "Modification" or "modified" means structural changes and alterations to the wastewater storage containment facility which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility.

(13) "Noncompliance" means a practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge, or a condition on the poultry CAFO that does not meet the requirements of the nutrient management standard, nutrient management plan, and 2004 American society of agricultural and biological engineers (ASABE) construction standard for waste containment systems.

(14) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(15) "Nutrient management standard" means the 2007 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590 or other equally protective standard approved by the director.

(16) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, that is recognized by law as the subject of rights and duties.

(17) "Poultry" means chickens, turkeys, ducks, geese and any other bird raised in captivity.

(18) "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other AFO facilities; direct contact swimming, washing or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products or byproducts including manure, litter, feed, milk, eggs or bedding.

(19) "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area and the waste containment area. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, barnyards and animal walkways. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of "production area" is any egg washing or egg processing

facility, and any area used in the storage, handling, treatment or disposal of mortalities.

(20) "Unauthorized discharge" means a discharge of process wastewater or manure to state surface waters that is not authorized by an NPDES permit or the release of process wastewater or manure to waters of the state that does not meet the requirements of this chapter.

(21) "Wastewater storage and containment facilities" means the portion of an AFO where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(22) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

History.
I.C., § 25-4002, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. For more on ASABE standards, see *http://www.asabe.org/standards/about.html*.

The letters "ASABE" enclosed in parentheses so appeared in the law as enacted.

Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

Cross Reference. Animal industries, § 25-201 et seq.

25-4003. Permit required. — (1) No person shall construct, operate or expand a poultry CAFO of any size without first obtaining a permit issued by the director.

(2) Two (2) or more poultry CAFOs under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than a large or medium poultry CAFO, if they use a common animal waste management system or land application site.

(3) The provisions of this section shall be applicable only to those poultry CAFOs constructed or modified after the effective date of this chapter.

History.
I.C., § 25-4003, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4004. Permit application. — (1) Every person who is required to obtain a permit under this chapter shall submit a permit application to the department prior to facility operation or expansion. A permit application will be used to determine if the construction and operation plans of a large or medium poultry CAFO will be in conformance with the provisions of this chapter.

(2) Each application shall include information in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection. In accordance with the provisions of section 25-4012, Idaho Code, the director is authorized to promulgate rules to designate the contents of a permit application.

History.
I.C., § 25-4004, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4005. Existing facilities. — (1) Existing large and medium poultry CAFO owners shall register with the department no later than January 1, 2012, upon forms created by the department. None of the provisions in this section shall be construed to deny an existing operation the opportunity to apply for and receive a permit under this chapter.

(2) Existing large and medium poultry CAFOs shall submit a nutrient management plan to the director for approval within one (1) year of the effective date of this chapter. An application fee shall not be required unless the CAFO is expanding.

(3) The owner of an existing poultry operation shall not increase the one-time animal capacity of the operation by ten percent (10%) or more without first obtaining a permit for the expansion as required by the provisions of this chapter. The ten percent (10%) increase is measured cumulatively from the original effective date of this chapter or the date the owner first obtained a permit.

History.
I.C., § 25-4005, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4006. Design and construction. — Each new or modified large and medium CAFO shall design and construct all new and modified wastewater storage and containment facilities in accordance with the engineering standards and specifications provided by the natural resource conservation service or the American society of agricultural and biological engineers (ASABE) or other equally protective standard approved by the director. The department's review and approval of plans under this section shall supersede the Idaho department of environmental quality's implementation of plan and specification review and approval provided pursuant to section 39-118, Idaho Code. Such design and construction shall be considered a best management practice.

History.
I.C., § 25-4006, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. For more on the natural resources conservation service, see *http://www.ncrs.usda.gov*.

For more on ASABE standards, see *http://www.asabe.org/standards/about.html*.

The letters "ASABE" enclosed in parentheses so appeared in the law as enacted.

Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4007. Nutrient management plans. — (1) All permitted CAFOs shall have and implement a nutrient management plan that has been reviewed and approved by the department.

(2) Nutrient management plans shall be amended if modifications to the CAFO, as outlined in the nutrient management standard or other conditions, warrant the amendment.

(3) Annual soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with

the nutrient management plan and nutrient management standard. The director may require more frequent soil tests if deemed necessary.

History.
I.C., § 25-4007, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4008. Inspections. — The director or his designee in the division of animal industries is authorized to enter and inspect any AFO and have access to or copy any facility records deemed necessary to ensure compliance with the provisions of this chapter. The director shall comply with the biosecurity protocol of the AFO so long as the protocol does not inhibit reasonable access to:

(1) Enter and inspect, at reasonable times, the premises or land application site or sites of an AFO;

(2) Review and copy, at reasonable times, any records that must be kept under conditions of this chapter;

(3) Sample or monitor, at reasonable times, substances or parameters directly related to compliance with this chapter.

History.
I.C., § 25-4008, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4009. Compliance schedules and monitoring. — (1) Compliance schedule. The director may establish a compliance schedule for facilities as part of the permit conditions including:

(a) Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or permit conditions; and

(b) Dates by which those steps or actions are to be taken.

(2) Monitoring requirements. Any facility may be subject to monitoring requirements including, but not limited to, the following:

(a) The type, installation, use and maintenance of monitoring equipment;

(b) Monitoring or sampling methodology, frequency and locations;

(c) Monitored substances or parameters;

(d) Testing and analytical procedures; and

(e) Reporting requirements including both frequency and form.

History.
I.C., § 25-4009, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4010. Fees and assessments to be collected. — (1) The department may levy a fee or assessment against the permit holder for the purpose of carrying out the provisions of this chapter and rules promulgated hereunder.

(2) Fees or assessments collected shall be used for costs related to the implementation of the provisions of this chapter.

(3) Fees or assessments shall be levied on a uniform basis in an amount reasonably necessary to cover the cost of the inspection program and the administration of the department of agriculture poultry program. The

department shall adjust the fees to be collected under this section as necessary to meet the expenses of the inspections.

(4) The annual fees or assessments shall be based on the square footage of the confinement area. Such fees or assessments may not exceed three cents (3¢) per square foot.

(5) All fees and assessments collected or received by the department under this chapter shall be deposited in the "poultry inspection fund," which fund is hereby created in the state treasury. All moneys coming into the poultry inspection fund are hereby appropriated to the department of agriculture to be used in the inspections required under this chapter.

(6) The fees and assessments accrued in any given year are due and payable no later than January 20 of the following year.

(7) Fees and assessments for new or expanded operations shall be prorated for each month of operation.

History.
I.C., § 25-4010, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4011. Designation. — (1) The director may, on a case by case basis, designate a poultry AFO as a medium poultry CAFO if it is determined that the AFO is a significant contributor of pollutants to waters of the state. The designated medium poultry CAFO will be required to follow all permit requirements for a medium poultry CAFO.

(2) The designation shall be provided to the operator of the poultry AFO in writing, setting forth the basis for the director's decision.

(3) The director shall consider the following factors when deciding whether to designate a poultry AFO:

(a) Size of the poultry AFO and the amount of manure, process wastewater and runoff reaching waters of the state;

(b) Location of the poultry AFO relative to waters of the state;

(c) Means of conveyance of manure, process wastewater and runoff into waters of the state;

(d) Slope, vegetation, precipitation and other factors affecting the likelihood or frequency of discharge of manure, process wastewater or runoff into waters of the state;

(e) Unauthorized discharges into waters of the state through a man-made ditch, flushing system or other similar man-made device;

(f) Unauthorized discharges directly into waters of the state that originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the AFO; and

(g) Repeated instances of noncompliance.

(4) Upon request by the operator, the director shall redesignate a facility previously designated under subsection (1) of this section if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation shall be provided to the operator in writing and any fees or assessments paid by the operation due to the designation will not be refundable to the operation.

History.
I.C., § 25-4011, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4012. Authority to promulgate rules. — (1) The legislature finds that poultry AFOs require adequate control through state regulatory mechanisms in order to prevent such operations from posing a threat to the state's water resources. The department of agriculture is in the best position to administer and implement rules to provide an adequate regulatory framework for poultry feeding operations.

(2) The director is authorized to modify the department's administrative rules and to make new rules for permitting and regulating poultry AFOs. Such regulations may include, but are not limited to, the information required on a permit application and the conditions for the issuance and maintenance of a permit, as the director deems necessary.

Nothing in this chapter prohibits the board of county commissioners of any county from adopting regulations that are more stringent than those adopted by the state.

History.
I.C., § 25-4012, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4013. Violations. — (1) The failure by a permittee to comply with the provisions of this chapter, rules promulgated hereunder, or with any permit condition shall be deemed a violation.

(2) Any person who knowingly makes a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit shall be deemed to have violated the provisions of this chapter.

(3) Any unauthorized discharge from a poultry AFO shall be deemed a violation.

(4) Any person violating any provision of this chapter, the rules promulgated hereunder or any permit or order issued hereunder shall be liable for a civil penalty as set forth in section 25-4014, Idaho Code.

(5) The director may revoke a permit for:

(a) A material violation of any condition of a permit; or

(b) If the permit was obtained by misrepresentation or failure to disclose all relevant facts.

(6) Prior to revoking a permit, the director shall issue a notice of intent to revoke, which shall become final unless the permittee timely requests, in writing, an administrative hearing. Such hearing shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.
I.C., § 25-4013, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

25-4014. Penalty for violations. — Whoever shall violate any of the provisions of this chapter or the rules promulgated hereunder:

(1) May be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars ($10,000) for each offense.

(2) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(3) No civil penalty may be assessed unless the person, corporation, cooperative or company charged is given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(4) If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.

(5) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(6) Moneys collected for violations pursuant to the provisions of this section shall be deposited in the state treasury and credited to the state school building fund.

(7) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

History.
I.C., § 25-4014, as added by 2011, ch. 227, § 1, p. 615.

Compiler's Notes. Section 4 of S.L. 2011, ch. 227 declared an emergency. Approved April 6, 2011.

TITLE 26

BANKS AND BANKING

CHAPTER.
1. Title and Scope of Act, §§ 26-106, 26-107.
2. Organization and Corporation Powers of Banks, §§ 26-201, 26-203, 26-213.
3. Bank Branches, § 26-307.
5. Bank Holding Companies, §§ 26-501, 26-503 — 26-505.
6. Reserves, Surplus and Dividends, §§ 26-601 — 26-603.
7. Limitations on Loans, Investments, and Practices, §§ 26-702 — 26-719.
8. Limitations on Borrowing Money and Pledging Assets, § 26-801.
11. Supervision by Department of Finance, §§ 26-1102, 26-1111.
21. Idaho Credit Union Act, § 26-2136.
22. Collection Agencies, §§ 26-2222 — 26-2240, 26-2243 — 26-2246, 26-2248, 26-2250, 26-2251.
25. Loan Brokers, §§ 26-2501, 26-2505.
27. Business and Industrial Development Corporations, §§ 26-2701, 26-2706, 26-2707, 26-2709, 26-2711, 26-2714 — 26-2716, 26-2718, 26-2720, 26-2723 — 26-2725, 26-2727, 26-2729, 26-2731.
28. Mortgage Companies, § 26-2802.
29. Money Transmission, §§ 26-2914 — 26-2917.
31. Idaho Residential Mortgage Practices Act, §§ 26-31-101 — 26-31-114, 26-31-201 — 26-31-212, 26-31-301 — 26-31-321.
32. Trust Institutions — General Provisions, § 26-3205.
37. Idaho Continuing-Care Disclosure Act, §§ 26-3701 — 26-3715.

CHAPTER 1

TITLE AND SCOPE OF ACT

SECTION.
26-106. Definitions.
26-107. Sections applicable to national banks.

26-106. Definitions. — As used in this act, unless the context or subject matter otherwise requires:

(1) "Bank" means any person engaged in soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether or not such deposit, however evidenced, is made subject to check or draft or other order.

(2) "Banking business" means the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business whether such deposit is made subject to check or draft or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) "Banking facility" means a place of business of a bank which performs activities limited to:

(a) Taking applications for loans, accepting deposits, issuing receipts therefor, and transmitting such deposits to the bank maintaining such facility;

(b) Carrying and disbursing cash change, cashing checks, accepting checks;

(c) Issuing checks drawn on or certified by the bank operating the facility,

renting safety deposit boxes, keeping necessary accounts of all transactions; and carrying out such other transactions as the director may allow by regulation.

(4) "Bank service corporation" means a corporation organized to perform bank services for two (2) or more banks, each of which owns part of the capital stock of such corporation, and which are subject to examination by either the department of finance of the state of Idaho or a federal bank supervisory agency.

For the purpose of this definition "bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(5) "Borrowing" means any nondeposit liability.

(6) "Branch" means any location except a bank facility or customer-bank communication terminal or bank service corporation at which a bank performs any or all functions of a bank.

(7) "Capital" means the amount of unimpaired paid-up common stock plus the amount of paid-up preferred stock issued and unimpaired.

(8) "Capital note" means a convertible or nonconvertible note of a bank subordinated as to principal and interest to the depositors of the bank and containing such conditions as the director may require.

(9) "Capital structure" means the total of the capital, surplus, undivided profits and subordinated capital notes and contingency reserves of the bank or such other account as determined by the director of the department of finance, less intangible assets.

(10) "Common stock" means the stock of a banking corporation other than preferred stock.

(11) "Commercial paper" means a short term negotiable instrument arising out of a commercial transaction; provided, however, that commercial paper shall not be construed to be a deposit as defined in this act.

(12) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(13) "Demand deposit" means all deposits except time deposits.

(14) "Deposit" means the act of placing or lodging money in the custody of a person, for safety or convenience whether interest-bearing or not, to be withdrawn at the will of the depositor or under rules, terms and regulations agreed upon by the depositor and the depository. If the context requires, deposit may also mean the money so deposited or the credit the depositor receives for it.

(15) "Depositor" means any person who deposits money.

(16) "Director" means the director of the department of finance.

(17) "Dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this act.

(18) "Executive officer" means each officer of a bank, who by virtue of his position, has both voice in the formulation of the policy of the bank and responsibility for the implementation of such policy.

(19) "Federal funds" means member bank deposits at federal reserve banks.

(20) "Federal reserve act" means and includes the act of congress of the United States approved December 23, 1913, as amended.

(21) "Federal reserve bank" means a federal reserve bank created and organized under the authority of the Federal Reserve Act.

(22) "Federal reserve board" means the board of governors of the Federal Reserve System created and described in the Federal Reserve Act.

(23) "Federal bank supervisory agency" means the comptroller of the currency, the board of governors of the Federal Reserve System, or the board of directors of the Federal Deposit Insurance Corporation.

(24) "Fiduciary" means trustee, agent, executor, administrator, personal representative, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(25) "Member bank" means any national bank or state bank which has become or which becomes a member of one (1) of the federal reserve banks created by the Federal Reserve Act.

(26) "Merger" means the union of two (2) or more bank corporations by the transfer of property of all to one (1) of them. As used in this act "merger" includes a consolidation.

(27) "Merging bank" means a party to a merger.

(28) "Mobile facility" means a banking facility which is moved from place to place and not permanently attached to real property.

(29) "National bank" means a bank organized under the laws of the United States and issued an organization certificate by the comptroller of the currency.

(30) "Net demand deposits" means the total of the bank's demand deposits after subtracting from the deposit balance due to any bank the deposit balance due from the same bank (other than trust funds deposited by either bank) and any cash items in the process of collection due from or due to such banks shall be included in determining such net balance, except that balances of time deposits of any bank and any balances standing to the credit of private banks, of banks in foreign countries, of foreign branches of other American banks, and of American branches of foreign banks shall be reported gross without any such subtraction, and excluding any deposits received in any office of the bank for deposits in any other office of the bank. The amount of trust funds held in the bank's own trust department, which the bank keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included as net deposits.

(31) "Net profits" means profits remaining after the deduction of all expenses including depreciation, losses, or doubtful assets, as required by the director of the department of finance, interest, and taxes accrued or due.

(32) "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, limited liability company, not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(33) "Preferred stock" means a class of the stock of a banking corporation issued in accordance with section 26-206, Idaho Code, which is accorded a preference or priority over the common stock of the corporation.

(34) "Resulting bank" means the bank resulting from a merger or conversion.

(35) "Savings deposit" means a deposit:

(a) That consists of funds deposited to the credit of or in which the entire beneficial interest is held by one (1) or more individuals, or a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, association, or other organization not qualifying above to the extent such funds do not exceed one hundred fifty thousand dollars ($150,000) per such depositor at a bank; and

(b) With respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give notice in writing of an intended withdrawal not less than thirty (30) days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(36) "State bank" means any bank chartered by the state of Idaho.

(37) "Temporary banking facility" means a banking facility which is operated for less than thirty (30) days and is established for the purpose of providing bank facility services for a specific occasion.

(38) "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(a) On a certain date, specified in the instrument, not less than thirty days (30) after the date of the deposit; or

(b) At the expiration of a certain specified time not less than thirty (30) days after date of the instrument; or

(c) Upon notice in writing which is actually required to be given not less than thirty (30) days before the date of repayment; and

(d) In all cases only upon presentation and surrender of the instrument.

(39) "Time deposit" means time certificates of deposit, time deposits open account, and savings deposits.

(40) "Time deposits open account" means a deposit, other than a time certificate of deposit, with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than thirty (30) days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than thirty (30) days in advance of withdrawal.

(41) "Trust department" means the division of a bank which has been granted trust powers by the director of finance.

History.
I.C., § 26-106, as added by 1979, ch. 41, § 2, p. 62; am. 2004, ch. 159, § 1, p. 511.

26-107. Sections applicable to national banks. — The provisions of sections 26-215, 26-301 through and including, 26-309, 26-311, 26-712, 26-713, 26-714, 26-1203, 26-1206, 26-1207, 26-1208, and 26-1209, 26-1601 through 26-1605, 26-2601 through 26-2612, Idaho Code, shall also apply to national banks.

History.
I.C., § 26-107, as added by 1979, ch. 41, § 2, p. 62; am. 1995, ch. 99, § 2, p. 299; am. 1997, ch. 225, § 1, p. 661; am. 2004, ch. 159, § 17, p. 511.

CHAPTER 2

ORGANIZATION AND CORPORATION POWERS OF BANKS

SECTION.
26-201. General corporation laws applicable.
26-203. Articles of incorporation — Form.
26-213. Board of directors — Election, meetings, duties, liabilities, oath, removal — Officers — Election and bond.

26-201. General corporation laws applicable. — Except as otherwise provided herein, the general business corporation laws of this state shall apply to all corporations organized and operating under the bank act. In the event of any conflict between the provisions of the bank act and the provisions of the general business corporation laws, the laws governing limited liability companies, partnerships and other business associations and entities, or the laws governing entity mergers, acquisitions, conversions, domestications, interest exchanges and divisions, the bank act shall control.

History.
I.C., § 26-201, as added by 1979, ch. 41, § 2, p. 62; am. 2008, ch. 140, § 3, p. 404.

Compiler's Notes. The 2008 amendment, by ch. 140, added the last sentence.

26-203. Articles of incorporation — Form. — Proposed articles of incorporation of a banking corporation shall be in a form acceptable to the director, and must be submitted to the director for approval as to form and content before the same are filed for record in the offices of the secretary of state; provided that no bank shall be required to have the word "corporation" in its corporate name. The articles may include a provision which eliminates or limits the personal liability of the directors of the bank in accordance with section 30-1-202, Idaho Code, provided that such provision shall not eliminate or limit the liability of a director under section 26-213(5), Idaho Code.

History.
I.C., § 26-203, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 242, § 1, p. 694; am. 1998, ch. 337, § 1, p. 1082; am. 2008, ch. 140, § 4, p. 404.

Compiler's Notes. The 2008 amendment, by ch. 140, deleted "and county recorder" following "secretary of state" in the first sentence.

26-213. Board of directors — Election, meetings, duties, liabilities, oath, removal — Officers — Election and bond. — (1) The affairs, business and property of a bank shall be managed and controlled by a board of not less than five (5) directors, who shall be elected by the stockholders at their regular stated annual meetings. A majority of said directors shall be residents of the state of Idaho.

(2) No person shall be eligible to serve as a director of any bank organized or existing under the laws of this state, unless he shall be the owner in his own right of unhypothecated common stock of the bank in the amount of at least five hundred dollars ($500) par value. One (1) or more of the directors of a bank, the majority of the common stock of which is owned by a bank holding company, may satisfy the requirement of this subsection by owning in his own right at least five hundred dollars ($500) of the unhypothecated common stock of the bank holding company, either the par value or the book value.

(3) Any vacancy in the board of directors shall be filled by the board, and any directors so appointed shall hold office until the next annual meeting of stockholders. The board of directors shall immediately following each annual meeting of stockholders organize and elect a president, vice-president and cashier, who may also be the secretary and treasurer of the bank, and such other officers as shall be provided for in the bylaws, and shall fix the salary of all officers and employees or delegate such authority to its managing officer or officers. Directors of every bank shall hold at least ten (10) meetings per year; provided, no more than sixty-five (65) days may elapse between board of directors meetings, and complete records of such meetings shall be entered in the minute book and signed by both the chairman and the secretary. The director may approve, upon written application, a reduction in the number and frequency of directors' meetings.

(4) Whenever a vote is taken upon any matter, a record shall be kept and entered in the minutes of those voting in the affirmative and those voting in the negative. At every meeting it shall be the duty of the directors to familiarize themselves with loans and investments made since the previous regular meeting and any director may request a listing of all loans made since the previous regular meeting. It shall be the duty of the president and cashier to furnish such information to the directors. The directors shall familiarize themselves with the existing liabilities to the bank of every officer and director of their bank at least once during each calendar year. The minutes of the meeting shall record the approval or disapproval of loans, investments and liabilities of officers.

(5) Any director, officer or person who shall participate in any violation of the laws of this state relative to banks or banking, shall be liable for all damages which said bank, its stockholders, depositors, or creditors shall sustain in consequence of such violation. It shall be the duty of every director of a bank personally to attend all meetings of the board of directors unless unavoidably detained therefrom. Any director who shall habitually absent himself from such meeting shall be deemed to have participated in any violation of law that may have occurred in his absence, and he shall not be permitted to set up such absence as a defense thereto.

(6) Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office and will not knowingly violate or permit a violation of any provisions of the bank act, and such oath of office shall be transmitted to and filed with the department of finance. A director may be removed from office at any time for violation of his oath of office by the affirmative vote of two-thirds (2/3) of the entire board, exclusive of the director to be removed.

(7) Every active officer and employee of any bank in this state shall furnish a surety bond in the penal sum of fifty thousand dollars ($50,000) to the bank by which he is employed for the faithful performance of his duties, executed by a surety company authorized to do business in the state of Idaho as a surety. In lieu of the individual surety bonds required by this section, a bank may provide a bankers blanket or financial institution bond in a minimum amount of two hundred fifty thousand dollars ($250,000). The conditions of such bond, whether the instrument so describes the conditions or not, shall be that the principal shall protect the obligee against any loss or liability that the obligee may suffer or incur by reason of the acts of dishonesty of the principal.

(8) In lieu of the bonds required in subsection (7) of this section, a bank may, with the approval of the director of the department of finance, provide to the director a certificate of deposit issued by any other bank in the state of Idaho. The principal amount of the certificate of deposit shall be payable to the director and shall be in an amount to be determined by the director, but not less than two hundred fifty thousand dollars ($250,000). The interest on the certificate of deposit shall be payable to the bank providing the certificate of deposit to the director. The certificate of deposit shall be maintained at all times the bank is authorized to do business under this chapter, and for a period of time thereafter to be determined by the director, but not to exceed three (3) years.

(9) Every bank shall provide adequate insurance protection or indemnity against robbery and burglary and other similar insurable losses.

(10) All surety bonds shall be approved by and filed with the directors. The directors or the director may require an increase of the amount of any such bond whenever either the directors or the director deem necessary for the better protection of the bank.

History.

I.C., § 26-213, as added by 1979, ch. 41, § 2, p. 62; am. 1986, ch. 316, § 1, p. 316; am. 1987, ch. 293, § 1, p. 622; am. 1991, ch. 145, § 1, p. 344; am. 1993, ch. 53, § 1, p. 137; am. 2007, ch. 126, § 1, p. 376.

Compiler's Notes. The 2007 amendment, by ch. 126, deleted the former last sentence in subsection (4), which read: "Each officer and director who borrows money from the bank shall submit his personal financial statement to the chief executive officer of the bank at least once during each calendar year and such financial statements shall be made available to federal or state regulatory agencies upon request by the agency."

CHAPTER 3

BANK BRANCHES

SECTION.
26-307. Addition to capital structure of bank. [Repealed.]

26-307. Addition to capital structure of bank. [Repealed.]

Compiler's Notes. This section, which comprised I.C., § 26-307, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2008, ch. 140, § 1.

CHAPTER 5

BANK HOLDING COMPANIES

SECTION.
26-501. Definitions.
26-503. Approval to acquire a bank — Requirements — Approval to commence action or acquire a company.
26-504. Existing bank holding company. [Repealed.]
26-505. Director of finance — Reports — Requirements.

26-501. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Bank" shall mean any bank chartered under this act.

(2) "Company" shall mean any corporation, business trust, association, or similar organization but shall not include:

(a) An individual; or

(b) Any corporation the majority of shares of which are owned by the United States or any state.

(3) "Business trust" shall mean a business organization wherein a business or other property is conveyed to trustees who manage the business or other property for the benefit of the certificate or shareholders of the trust. Business trust shall not include a voting trust.

(4) "Bank holding company" shall mean any company:

(a) Which directly or indirectly owns or controls twenty-four percent (24%) or more of the voting shares of a bank;

(b) Which controls in any manner the election of the majority of the directors of a bank; or

(c) For the benefit of whose shareholders or members twenty-four percent (24%) or more of the voting shares of a bank is held by trustees;

For the purposes of any proceeding under subsection (4)(b) of this section, there is a presumption that any company which directly or indirectly owns, controls or has power to vote less than five percent (5%) of the voting shares of a bank does not have control over that bank; and

(5) Notwithstanding the foregoing:

(a) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of shares of stock of a bank unless such trust is a business trust or a voting trust which by its terms or by law does not expire within ten (10) years from the effective date of the voting trust;

(b) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(c) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith and which are held only for such period of time as will permit the sale thereof on a reasonable basis.

(6) "Financial holding company" shall mean a bank holding company that, notwithstanding subsection (4) of this section, may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the director determines, by rule or order:

(a) To be financial in nature or incidental to such financial activity; or

(b) Is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system in general.

History.
I.C., § 26-501, as added by 1979, ch. 41, § 2, p. 62; am. 2001, ch. 137, § 1, p. 496.

26-503. Approval to acquire a bank — Requirements — Approval to commence action or acquire a company. — (1) A bank holding company shall apply to the department of finance and receive the approval of the department of finance prior to acquiring a bank. The application shall include such information with respect to the financial condition and operations, management and intercompany relationships of the bank to be acquired and the holding company as the director may deem necessary or appropriate. In considering an application to acquire a bank, the director shall consider at least:

(a) The financial condition of the bank holding company and any banks already owned by the holding company;

(b) The probable effect of the acquisition on the holding company, any banks already owned by the holding company and the bank which is to be acquired; and

(c) The effect of the acquisition on competition in the providing of banking services.

(2) A financial holding company shall apply to the department of finance and receive the approval of the department of finance prior to commencing any activity or acquiring any company as described in section 26-501(6), Idaho Code.

History.
I.C., § 26-503, as added by 1979, ch. 41, § 2, p. 62; am. 2001, ch. 137, § 2, p. 496.

26-504. Existing bank holding company. [Repealed.]

Compiler's Notes. This section, which comprised I.C., § 26-504, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2007, ch. 126, § 2.

26-505. Director of finance — Reports — Requirements. — The director may require reports made under oath to be filed in the department of finance to keep it informed as to the operation of any bank holding company. The director may make examinations of each bank holding company and each subsidiary thereof under the provisions of section 26-1102, Idaho Code, the actual cost of which may be assessed against and paid by such holding company. The director may accept reports of examinations made by the federal reserve board, the comptroller of the currency, or the federal deposit insurance corporation in lieu of making an examination by the department.

History.
I.C., § 26-505, as added by 1979, ch. 41, § 2, p. 62; am. 2001, ch. 137, § 3, p. 496.

CHAPTER 6

RESERVES, SURPLUS AND DIVIDENDS

SECTION.
26-601. Reserve.
26-602. Diminution of reserve.
26-603. Director of the department of finance — Reserve. [Repealed.]

26-601. Reserve. — Every bank organized under the laws of this state and authorized to receive deposits shall comply with the reserve requirements of the Federal Reserve act.

History.
I.C., § 26-601, as added by 1979, ch. 41, § 2, p. 62; am. 1981, ch. 8, § 1, p. 15; am. 2008, ch. 140, § 5, p. 404.

Compiler's Notes. The Federal Reserve Act, referred to in this section, is compiled throughout title 12 of the United States Code.

The 2008 amendment, by ch. 140, rewrote the section to the extent that a detailed comparison is impracticable.

26-602. Diminution of reserve. — (1) When the reserve of any bank falls below the amount required by section 26-601, Idaho Code, for any reporting period, the bank shall immediately restore its reserve to the amount required by section 26-601, Idaho Code, and in addition:

(a) If a bank is deficient in reserve for two (2) nonconsecutive reporting periods in a calendar year, the bank shall pay to the department of finance at the end of the second reporting period a fine of three hundred dollars ($300).

(b) If a bank is deficient in reserves for three (3) nonconsecutive reporting periods in a calendar year, the bank shall pay to the department of finance at the end of the third reporting period a fine equal to five percent (5%) of the dollar amount by which it was deficient in reserves for the third reporting period or five hundred dollars ($500), whichever is greater.

(c) If a bank is deficient in reserves for more than three (3) nonconsecu-

tive reporting periods or for two (2) or more consecutive reporting periods in a calendar year, the director shall proceed as provided in section 26-1115, Idaho Code. The bank shall not increase its loans or discounts until its reserve is fully restored and the director may by order set a minimum level of cash reserves which the bank must maintain until such time as the director has reason to believe that the bank will comply with the reserve requirements of section 26-601, Idaho Code.

(2) The penalties set out in subsection (1) of this section are not exclusive. The director may in proper cases proceed in his discretion as provided in section 26-1115, Idaho Code, or chapter 10, title 26, Idaho Code.

History.
I.C., § 26-602, as added by 1979, ch. 41, § 2, p. 62; am. 2008, ch. 140, § 6, p. 405.
Compiler's Notes. The 2008 amendment, by ch. 140, throughout subsection (1), substituted references to "reporting period" for "biweekly period."

26-603. Director of the department of finance — Reserve. [Repealed.]

Compiler's Notes. This section, which comprised I.C., § 26-603, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2008, ch. 140, § 1.

CHAPTER 7

LIMITATIONS ON LOANS, INVESTMENTS, AND PRACTICES

SECTION.
26-702. Bank stock.
26-703. Real estate loans.
26-704. Determination of limits of loans and investments of banks.
26-705. Loans to one person.
26-706. Loans to officers and directors.
26-707. Real estate holdings.
26-708. Valuation of assets.
26-709. Statutory bad debt.
26-710. Ownership and leasing of property for customers.
SECTION.
26-711. Lending of credit — Suretyship and guarantyship.
26-712. Validity of transactions.
26-713. Adverse claim to bank deposit.
26-714. Account of person under disability.
26-715. Branch or office at which instruments are to be presented must be indicated.
26-716 — 26-719. [Amended and Redesignated.]

26-702. Bank stock. — (1) Except as provided in subsection (2) of this section, no bank shall accept as collateral, nor make any loans or discounts on the security of nor purchase any shares of its own capital stock. No bank shall purchase the shares of any other bank wherever organized, or situated, except stock of federal reserve banks. A bank may acquire a security interest in or purchase its own stock if the acquisition is necessary to prevent loss upon a debt previously contracted in good faith and the stock so purchased or acquired shall within six (6) months from the date of acquirement be sold or disposed of at public or private sale. After the expiration of six (6) months any such stock shall not be considered as a part of the assets of such bank.

(2) With the written approval of the director, a bank may redeem or otherwise purchase shares of its own capital stock if the director finds that such redemption or purchase does not impair the capital structure of the bank as required by section 26-205, Idaho Code, is for legitimate corporate

purposes and not for speculation, is not for an unreasonable price, does not conflict with the articles of incorporation or the bylaws of the bank, and is not otherwise detrimental to the bank or to the public interest. Legitimate corporate purposes for acquiring and holding of treasury stock may include:

(a) To have shares available for use in connection with employee stock option, bonus, purchase or similar plans;

(b) To sell to a director for the purpose of acquiring qualifying shares;

(c) To purchase a director's qualifying shares upon cessation of the director's service in that capacity if there is no ready market for the shares;

(d) To reduce the number of shareholders to qualify as a subchapter S corporation;

(e) To reduce costs associated with shareholder communications and meetings;

(f) To facilitate a bank's shareholder dividend reinvestment plan; or

(g) Any other legitimate corporate purpose as may be approved by the director.

History.
I.C., § 26-702, as added by 1979, ch. 41, § 2, p. 62; am. 1986, ch. 58, § 1, p. 167; am. 2008, ch. 140, § 7, p. 405.

Compiler's Notes. The 2008 amendment, by ch. 140, in the introductory paragraph in subsection (2), in the first sentence, substituted "shares" for "a portion," inserted "is for legitimate corporate purposes and not for speculation," and deleted "provided, however, (i) that a bank may not hold its capital stock so redeemed or purchased for a period longer than twelve (12) months from the date of such redemption or purchase, and (ii) a bank shall not retain at any one time a total number of shares of its capital stock so redeemed or purchased in excess of seven per cent (7%) of the total number of shares of its capital stock then issued and outstanding" from the end and added the last sentence; and added paragraphs (2)(a) through (2)(g).

26-703. Real estate loans. — Any bank may make real estate loans secured by liens upon improved real estate, including improved farm land and improved business and residential properties, as are consistent with safe and sound banking practices. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument which shall constitute a lien upon real estate.

History.
I.C., § 26-703, as added by 1979, ch. 41, § 2, p. 62; am. 2004, ch. 159, § 2, p. 511; am. 2007, ch. 126, § 3, p. 376.

Compiler's Notes. The 2007 amendment, by ch. 126, deleted "first" preceding "liens upon improved real estate" in the first sentence.

26-704. Determination of limits of loans and investments of banks. — For the purpose of determining limitations on loans and investments the following items are to be disregarded:

(1) The sale of excess reserve funds by one (1) bank to another bank;

(2) The purchase of securities by a bank, under an agreement to resell at the end of a stated period; and

(3) The purchase of mortgage loans by a bank, under agreement to resell at the end of a stated period.

The director may, upon application by a bank, approve loans and investments in excess of the limitations provided in this chapter.

History.
I.C., § 26-708, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 4, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-708.

Former section 26-704 comprising I.C., § 26-704, as added by 1979, ch. 41, § 2, p. 62 was repealed by S.L. 2004, ch. 159, § 3.

An earlier § 26-704 was repealed in 1979. See Compiler's notes, § 26-701.

26-705. Loans to one person. — (1) The total loans and extensions of credit by a bank to a person outstanding at one (1) time, shall at no time exceed twenty percent (20%) of the capital structure of such bank.

(2) "Borrower" means a person who is named as a borrower or debtor in a loan or extension of credit, a counterparty to whom a bank has credit exposure in a derivative transaction entered into by the bank, or any other person including a drawer, endorser or guarantor, who is deemed to be a borrower under the direct benefit and common enterprise tests set forth in this section.

(3) "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note or option that is based, in whole or in part, on the value of, any interest in or any quantitative measure or the occurrence of any event relating to, one (1) or more commodities, securities, currencies, interest or other rates, indices or other assets.

(4) "Loans and extensions of credit" means a bank's direct or indirect advance of funds to or on behalf of a borrower based upon an obligation of the borrower to repay the funds, or repayable from specific property pledged by or on behalf of the borrower, and includes, for the purposes of this section:

(a) A contractual commitment to advance funds;

(b) A maker or endorser's obligation arising from a bank's discount of commercial paper;

(c) A bank's purchase of securities subject to an agreement that the seller shall repurchase the securities at the end of a stated period, but not including a bank's purchase of type I securities, as defined in 12 CFR part 1, subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the type I securities as collateral;

(d) A bank's purchase of third-party paper subject to an agreement that the seller shall repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

(e) An overdraft, whether or not prearranged, but not an intraday overdraft for which payment is received before the close of business of the bank that makes the funds available;

(f) The sale of federal funds with a maturity of more than one (1) business day, but not federal funds with a maturity of one (1) day or less or federal funds sold under a continuing contract;

(g) Loans or extensions of credit that have been charged off on the books of the bank in whole or in part, unless the loan or extension of credit:

(i) Is unenforceable by reason of discharge in bankruptcy;

(ii) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(iii) Is no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable; and

(h) Any credit exposure in a derivative transaction.

(5) The following items do not constitute loans or extensions of credit for purposes of this section:

(a) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(b) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(c) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(d) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by this section), or a new borrower replaces the original borrower, or unless the director determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(e) Amounts paid against uncollected funds in the normal process of collection;

(f)(i) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing shall be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(ii) When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded shall be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming, rather than a violation, if:

1. The originating bank had a valid and unconditional participation agreement with a participating bank or banks that was sufficient to reduce the loan to within the originating bank's lending limit;

2. The participating bank reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

3. The participation was to be funded by close of business of the originating bank's next business day; and

(g) Intraday credit exposure in a derivative transaction.

(6) The following loans or extensions of credit are not subject to the lending limits of this section:

(a) The discount of bills of exchange drawn in good faith against actual existing values;

(b) The discount of bankers' acceptances of other banks;

(c) The discount of commercial or business paper actually owned by the person negotiating the same;

(d) The obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the federal farm loan act;

(e) Loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty percent (120%) of the amount loaned thereon;

(f) Loans and extensions of credit to the extent secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any federal reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or

(g) Loans, including portions thereof, secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law.

(7) Combination. Loans or extensions of credit to one (1) borrower shall be attributed to another person and each person shall be deemed a borrower when proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, or when a common enterprise is deemed to exist between the persons.

(a) Direct benefit. The proceeds of a loan or extension of credit to a borrower shall be deemed to be used for the direct benefit of another person and shall be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person,

other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods or services.

(b) Common enterprise. A common enterprise shall be deemed to exist and loans to separate borrowers shall be aggregated:

(i) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer shall not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee unless the standards of paragraph (b)(ii) of this subsection are met;

(ii) When loans or extensions of credit are made:

1. To borrowers who are related directly or indirectly through common control, including where one (1) borrower is directly or indirectly controlled by another borrower; and

2. Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty percent (50%) or more of one (1) borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(iii) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than fifty percent (50%) of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) When the director determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(c) Loans to a corporate group.

(i) Loans or extensions of credit by a bank to a corporate group may not exceed fifty percent (50%) of the bank's capital and surplus. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than fifty percent (50%) of the voting securities or voting interests of the corporation or company.

(ii) Except as provided in paragraph (c)(i) of this subsection, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(d) Loans to partnerships, joint ventures, and associations.

(i) Partnership loans. Loans or extensions of credit to a partnership, joint venture or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members,

by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture or association, and those provisions are valid under applicable law.

(ii) Loans to partners.

1. Loans or extensions of credit to members of a partnership, joint venture or association are not attributed to the partnership, joint venture or association unless either the direct benefit or the common enterprise test is met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

2. Loans or extensions of credit to members of a partnership, joint venture or association are not attributed to other members of the partnership, joint venture or association unless either the direct benefit or common enterprise test is met.

(e) Loans to foreign governments and their agencies and instrumentalities.

(i) Aggregation. Loans and extensions of credit to foreign governments and their agencies and instrumentalities shall be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

1. The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it shall be presumed that the means test has not been satisfied.

2. The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

(ii) Documentation. In order to show that the means and purpose tests have been satisfied, a bank must, at a minimum, retain in its files the following items:

1. A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

2. Financial statements for the borrowing entity for a minimum of three (3) years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three (3) years;

3. Financial statements for each year the loan or extension of credit is outstanding;

4. The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and

financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

5. A loan agreement or other written statement from the borrower that clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(8) A bank shall evaluate the credit exposure in a derivative transaction in accordance with a methodology approved by any federal bank supervisory agency. In each type of derivative transaction a bank engages in, a bank shall use the same credit exposure methodology in all derivative transactions of that type.

(9) Lending limit calculation. For purposes of determining compliance with this section, a bank shall determine its lending limit as of the last day of the preceding calendar quarter. A bank's lending limit calculated in accordance with this section shall be effective on the date that the limit is to be calculated. If the director determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by this subsection, the director may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice from the director.

(10) Nonconforming loans and extensions of credit. A loan or extension of credit, within a bank's legal lending limit when made, shall not be deemed a violation but shall be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's lending limit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules have changed. A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming under this subsection into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(b) Collateral securing the loan or extension of credit to satisfy the requirements of a lending limit exception has declined in value. A bank must bring a loan or extension of credit that is nonconforming under this subsection into conformity with the bank's lending limit within thirty (30) calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(c) In the case of credit exposure in a derivative transaction, the credit exposure increases after execution of the transaction. A bank must use reasonable efforts to bring a derivative transaction that is nonconforming under this subsection into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(11) When in the judgment of the director the loans and extensions of credit to any person, or the combined loans and extensions of credit to any corporation and one (1) or more of its stockholders are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

Provided, further, that the director may compel the reduction of any loan or extension of credit which shall in his judgment appear excessive or dangerous.

History.

I.C., § 26-709, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 5, p. 511; am. 2013, ch. 55, § 1, p. 124.

Compiler's Notes. The federal farm loan act, referred to in subsection (6)(d), is compiled throughout title 12 of the United States Code.

This section was formerly compiled as § 26-709.

Former section 26-705, comprising I.C., § 26-705, as added by 1979, ch. 41, § 2, p. 62 was repealed by S.L. 2004, ch. 159, § 3.

An earlier § 26-705 was repealed in 1979. See Compiler's notes, § 26-701.

The 2013 amendment, by ch. 55, added subsections (2), (3) and (8) and redesignated the subsequent subsections accordingly; added paragraph (h) in subsection (4); added paragraph (g) in subsection (5); added "Lending limit" to the beginning of subsection (9); in subsection (10), added "and extensions of credit" at the end of the heading and inserted "or extension of credit" in the introductory paragraph and in paragraphs (a) and (b), and added paragraph (c); and inserted "or extension of credit" in the last paragraph.

Section 2 of S.L. 2013, ch. 55 declared an emergency and made this section retroactive to January 21, 2013. Approved March 12, 2013.

26-706. Loans to officers and directors. — Except as authorized under this section, no bank may extend credit in any manner to any of its own executive officers. Any extension of credit under this section must be approved by the board of directors of the bank, and may be made only if such credit extension comports with the principles of safety and soundness and is in compliance with regulation O of the board of governors of the federal reserve system, 12 CFR 215. Each executive officer and director who receives an extension of credit from the bank shall submit a personal financial statement to the chief executive officer of the bank at least once during each calendar year and such financial statement shall be made available to federal or state regulatory agencies upon request by the agency.

History.

I.C., § 26-710, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 93, § 1, p. 193; am. 1995, ch. 99, § 4, p. 299; am. and redesig. 2004, ch. 159, § 6, p. 511; am. 2007, ch. 126, § 4, p. 376.

Compiler's Notes. This section was formerly compiled as § 26-710.

Former section 26-706 comprising I.C., § 26-706, as added by 1979, ch. 41, § 2, p. 62 was repealed by S.L. 2004, ch. 159, § 3.

An earlier § 26-706 was repealed. See Compiler's notes, § 26-701.

The 2007 amendment, by ch. 126, added "and directors" in the section catchline, and added the last sentence.

26-707. Real estate holdings. — A bank may purchase, acquire, hold and convey real estate for the following purposes only:

(1) Such as shall be necessary for the convenient transaction of its business, including at the same location as its banking offices other property to rent as a source of income; provided, however, that no bank shall invest in buildings and lots and furniture, fixtures and equipment in an amount greater than fifty percent (50%) of the capital structure of such bank.

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of business.

(3) Such as it shall purchase at sale on judgments, decrees, mortgage foreclosure or trustees sale for debts previously contracted, but a bank shall not bid at such sale a larger amount than is necessary to satisfy all debts and costs necessary to obtain clear title. Such real estate shall be carried on the books of the bank at the lower of cost or market value. Market value shall be determined by a current appraisal prepared by an independent qualified appraiser approved by the director. Thereafter, but no more frequently than annually, the director may in his discretion request that the bank obtain from an independent qualified appraiser approved by the director, a further appraisal of market value or certification by the appraiser that the market value has not declined.

(4) No real estate acquired under subsections (2) and (3) of this section may be held for a longer period than five (5) years, provided, however, that upon application by the bank, the director shall approve the continued holding of any such real estate by the bank for an additional period of five (5) years upon the bank's showing of its good faith attempt to dispose of the real estate within the first five (5) year period, or that disposal within the first five (5) year period would be detrimental to the bank; and provided further that the bank shall, during the second five (5) year period, at the end of each year beginning at the end of the sixth year in which the property is held, write down the value of such real estate by twenty percent (20%) of the value at which such real estate is carried on its books at the beginning of the second five (5) year period. Value at the beginning of the second five (5) year period shall be the lower of cost or market value as determined pursuant to appraisal as provided in subsection (3) of this section. Nothing in this section shall be construed to prevent a bank from making loans secured by real estate as provided in this act, or a trust department holding and conveying real estate in trust.

(5) A bank may, with the approval of the director and the board of governors of the Federal Reserve System or the Federal Deposit Insurance Corporation invest in bank premises or in the stock, bonds, debentures, or other obligations of any corporation holding the banking buildings, lots and furniture, fixtures and equipment of such bank in an amount not to exceed the capital and surplus of the bank.

History.

I.C., § 26-711, as added by 1979, ch. 41, § 2, p. 62; am. 1987, ch. 165, § 1, p. 325; am. and redesig. 2004, ch. 159, § 7, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-711.

Former section 26-707 comprising I.C., § 26-707, as added by 1979, ch. 41, § 2, p. 62 was repealed by S.L. 2004, ch. 159, § 3.

26-708. Valuation of assets. — No bank shall enter or at any time carry on its books any of its assets at a valuation exceeding their actual cost to the bank; nor shall the value of any of its assets be increased on the books of the bank without the written consent of the director. Additional charges, delinquency charges and other similar charges on consumer credit transactions permitted by and made in compliance with the Idaho Credit Code and

added to the principal balance of the loan, shall not come within the prohibition of this section.

History.
I.C., § 26-712, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 8, p. 511; am. 2008, ch. 140, § 8, p. 406.

Compiler's Notes. This section was formerly compiled as § 26-712.

The 2008 amendment, by ch. 140, substituted "Idaho Credit Code" for "Uniform Consumer Credit Code" in the last sentence.

26-709. Statutory bad debt. — Every bank carrying any bad debt, or a debt of doubtful value, as an asset shall, upon the request or demand of the director, collect the same or put it in good bankable condition or charge it out of its books. Any debt on which interest is past due and unpaid for a period of six (6) months, unless the same is well secured and in process of collection, shall be considered a bad debt within the meaning of this section.

History.
I.C., § 26-713, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 9, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-713.

26-710. Ownership and leasing of property for customers. — A bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property.

History.
I.C., § 26-714, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 10, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-714.

26-711. Lending of credit — Suretyship and guarantyship. — A bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, only if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability.

History.
I.C., § 26-715, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 11, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-715.

26-712. Validity of transactions. — Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours.

History.
I.C., § 26-716, as added by 1979, ch. 41, § 2, p. 62; am. 1993, ch. 52, § 2, p. 133; am. and redesig. 2004, ch. 159, § 12, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-716.

26-713. Adverse claim to bank deposit. — Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not require the bank to recognize the adverse claim unless the adverse claimant shall:

(1) Procure a restraining order, injunction or other appropriate process against the bank from a court of competent jurisdiction wherein the person to whose credit the deposit stands is made a party and served with summons; or

(2) Execute to said bank, in a form and with sureties acceptable to the bank, a bond indemnifying the bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

This section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship and the facts showing reasonable cause for belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant.

History.

I.C., § 26-717, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 13, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-717.

Bankruptcy.

Despite a bank's contention that §§ 26-717, [now this section] 28-4-401, 68-309 taken together dictated that only the owner of a bank account may assert a legally cognizable interest in a deposit account, the statutes did not resolve the rights of the account owner in relation to the bankruptcy debtor, the true owner of the funds deposited in that account; thus the use of account funds to pay a debt of the account owner was a transfer of the debtor's property which was avoidable in bankruptcy. Hopkins v. D.L. Evans Bank (In re Fox Bean Co.), 287 Bankr. 270 (Bankr. D. Idaho 2002).

26-714. Account of person under disability. — Whenever any minor or any person under disability shall become a depositor, as defined in section 26-106, Idaho Code, in any bank in his or her name, such bank may pay such money on the check, order or endorsement of such depositor the same as in cases of depositors not under disability, and such payment shall be in all respects valid in law.

History.

I.C., § 26-718, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 14, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-718.

26-715. Branch or office at which instruments are to be presented must be indicated. — All checks, drafts, bills of exchange or other orders for the payment of money drawn against any bank operating branch banks shall indicate the particular bank and branch at which the same are to be presented for payment or acceptance.

History.
I.C., § 26-719, as added by 1979, ch. 41, § 2, p. 62; am. and redesig. 2004, ch. 159, § 15, p. 511.

Compiler's Notes. This section was formerly compiled as § 26-719.

26-716. Validity of transactions. [Amended and Redesignated.]

Compiler's Notes. Section 26-716 was amended and redesignated as 26-712 by S.L. 2004, ch. 159, § 12.

26-717. Adverse claim to bank deposit. [Amended and Redesignated.]

Compiler's Notes. Section 26-717 was amended and redesignated as 26-713 by S.L. 2004, ch. 159, § 13.

26-718. Account of person under disability. [Amended and Redesignated.]

Compiler's Notes. Section 26-718 was amended and redesignated as 26-714 by S.L. 2004, ch. 159, § 14.

26-719. Branch or office at which instruments are to be presented must be indicated. [Amended and Redesignated.]

Compiler's Notes. Section 26-719 was amended and redesignated as 26-715 by S.L. 2004, ch. 159, § 15.

CHAPTER 8

LIMITATIONS ON BORROWING MONEY AND PLEDGING ASSETS

SECTION.
26-801. Borrowing money — Limitations.

26-801. Borrowing money — Limitations. — At no time shall the total borrowings of any bank exceed in the aggregate an amount equal to the capital structure of the bank, except with the consent of the director.

For the purpose of computing total borrowings the following items shall not be included:

(1) Federal funds purchased.

(2) The sale of securities by a bank, under an agreement to repurchase at the end of a stated period.

(3) Borrowings from the federal reserve system.

(4) The sale of mortgage loans by a bank, under agreement to repurchase at the end of a stated period.

(5) Money borrowed to meet seasonal requirements.

(6) Money borrowed to meet unexpected withdrawals.

(7) Capital notes issued in accordance with section 26-802, Idaho Code.

(8) Borrowing from federal home loan banks.

The total of all borrowings by a bank including those items excluded from the computation of total borrowings may not exceed in the aggregate an amount equal to two and one-half (2 1/2) times the capital structure of the bank, except with the consent of the director.

Whenever it shall appear to the director that a bank is borrowing money in excess of the above limitation, or for purposes other than as specified above, he may require it to reduce such borrowings within a time to be fixed by him.

History.
I.C., § 26-801, as added by 1979, ch. 41, § 2, p. 62; am. 2004, ch. 159, § 16, p. 511; am. 2007, ch. 126, § 5, p. 376.

Compiler's Notes. The 2007 amendment, by ch. 126, added subsection (8).

CHAPTER 11

SUPERVISION BY DEPARTMENT OF FINANCE

SECTION.
26-1102. Examination by department.

SECTION.
26-1111. Records not public.

26-1102. Examination by department. — (1) The director may examine no less often than once in eighteen (18) months, and more frequently whenever he shall deem it necessary, all records and other documents in the possession of or relating to the bank, bank trust department including records in the custody of a data processor or other person or company. For this purpose, the director shall have authority to demand and inspect all books, papers, moneys, notes, bonds, or evidences of debt of such bank and may examine on oath any of the directors, officers, agents, employees, customers, or depositors of such bank. Any willful false swearing in any examination shall be deemed perjury. During examinations, the directors, officers and employees shall give any assistance required by the director, but no examiner shall interfere with the routine duty of such directors, officers and employees.

(2) Whenever it shall come to the notice of the director that any bank has failed or refused to comply with any of the provisions of this act, the director is authorized to make a special examination of said bank and to charge and collect for such special examination; and to continue such examinations and charges at intervals of not less than thirty (30) days until such provisions are complied with.

(3) The director may in his discretion at any time omit his examination of any bank as above required and accept in lieu thereof the findings or result of an examination of such bank made by any bank regulatory or insuring agency of the United States authorized to make such examination.

(4) The director may in his discretion extend the examination period to no less often than once in twenty-four (24) months if:

(a) The bank has total assets of less than one billion dollars ($1,000,000,000);

(b) The bank is well capitalized, as defined in 12 U.S.C. section 1831o, the federal deposit insurance act;

(c) When the bank was most recently examined, it was found to be

well-managed and its composite condition was found to be outstanding or good; and

(d) The bank is not currently subject to a formal enforcement proceeding or order by the department or the appropriate federal banking agency.

History.
I.C., § 26-1102, as added by 1979, ch. 41, § 2, p. 62; am. 2007, ch. 126, § 6, p. 376.

Compiler's Notes. The 2007 amendment, by ch. 126, added the (1) through (3) subsection designations and subsection (4).

26-1111. Records not public. — (1) The department of finance shall keep proper books and records of all regulatory acts, matters and things done by it under the provisions of chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 21, 26, 32, 33, 34, 35, 36 and 37, title 26, Idaho Code, as records of its office, but the same shall be subject to disclosure according to chapter 3, title 9, Idaho Code, except as otherwise provided in this section and in sections 26-1112 and 67-2743E, Idaho Code.

(2) All written communications and copies thereof, between the department, the director, department employees and any bank, bank holding company, trust company, savings and loan association and credit union which relate in any manner to the examination or condition of the financial institution, are the property of the department of finance and, if acquired by any person, shall be returned to the department upon written demand.

(3)(a) The director of the department of finance, any federal bank or other financial institution regulatory or supervisory agency, and any bank, bank holding company, trust company, savings and loan association, or credit union incorporated or chartered under title 26, Idaho Code, or under federal law or the law of any state and doing business in the state of Idaho, shall each have a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, and the contents of any documents relating to any confidential communications, between the financial institution and the department of finance or federal bank or financial institution regulatory or supervisory agency made during the regulatory relationship.

(b) A communication is confidential if it is made during the regulatory relationship between the department of finance or the federal bank or other financial institution regulatory or supervisory agency and any such bank, bank holding company, trust company, savings and loan association or credit union, and if the communication is not designed or intended for disclosure to any other parties.

(c) The privilege may be claimed by the financial institution or by the department of finance or the federal bank or other financial institution regulatory or supervisory agency, or by the lawyer for either. The privilege may be waived only in accordance with this section and sections 26-1112 and 67-2743E, Idaho Code.

(d) The director of the department of finance or the appropriate officer or employee of the federal bank or other financial institution regulatory or supervisory agency may disclose confidential communications between the department or agency and financial institutions to the court, in camera, in a civil action. Such disclosure shall also be a privileged

communication and the privilege may be claimed by the director, officer or employee or his lawyer.

(e) No sanction may be imposed upon any financial institution as a result of the claim of a privilege by the financial institution or the director of the department of finance or the officer or employee of the federal supervisory agency under this section.

History.

I.C., § 26-1111, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 213, § 21, p. 480; am. 1993, ch. 187, § 1, p. 477; am. 2000, ch. 288, § 2, p. 970; am. 2005, ch. 265, § 16, p. 810.

Compiler's Notes. Section 15 of S.L. 2005, ch. 265 is compiled as §§ 26-3701 — 26-3715 and Section 17 is compiled as § 26-2226.

Section 20 of S.L. 2005, ch. 265 provides: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CHAPTER 21

IDAHO CREDIT UNION ACT

SECTION.

26-2136. Examinations and fees.

26-2136. Examinations and fees. — The department of finance shall examine each credit union no less often than once in eighteen (18) months, and more frequently whenever the director shall deem it necessary. Each credit union and all of its officers and agents shall be required to give to representatives of said department full access to all books, papers, securities, records and other sources of information under their control; and for the purpose of such examination, said representatives shall have power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

A report of such examination shall be forwarded to the president of each credit union within thirty (30) days after the completion of the examination. Within thirty (30) days after the receipt of such report, a general meeting of the directors and committeemen shall be called to consider matters contained in the report. A reply to the director shall be forwarded by the board within fifteen (15) days.

On or before February 15 of each calendar year, the director shall fix and collect from each credit union an assessment fee based upon the total assets of the credit union as of December 31 of the previous calendar year, which fees shall not exceed the amounts set forth in the following schedule:

TOTAL ASSETS	FEE
$50,000 or less	$50.00 + $1.00 per thousand dollars of assets
Over $50,000 and not over $100,000	$100.00 + $.99 per thousand dollars of assets in excess of $50,000
Over $100,000 and not over $250,000	$149.00 + $.94 per thousand dollars of assets in excess of $100,000

TOTAL ASSETS	FEE
Over $250,000 and not over $1 million	$291.00 + $.89 per thousand dollars of assets in excess of $250,000
Over $1 million and not over $2 million	$958.00 + $.80 per thousand dollars of assets in excess of $1 million
Over $2 million and not over $5 million	$1,758.00 + $.61 per thousand dollars of assets in excess of $2 million
Over $5 million and not over $8 million	$3,588.00 + $.48 per thousand dollars of assets in excess of $5 million
Over $8 million	$5,028.00 + $.35 per thousand dollars of assets in excess of $8 million

The director may in his discretion at any time accept in lieu of any portion of his examinations the findings or result of an audit by a firm of independent certified public accountants or other qualified person or firm approved by the director. The cost of the audit shall be borne by the credit union.

All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho credit union act shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

History.

I.C., § 26-2136, as added by 1977, ch. 213, § 2, p. 582; am. 1980, ch. 168, § 1, p. 360; am. 1984, ch. 47, § 5, p. 76; am. 1999, ch. 202, § 1, p. 545.

CHAPTER 22

COLLECTION AGENCIES

SECTION.
26-2222. Definitions.
26-2223. Collection agency, debt counselor, credit counselor, or credit repair organization — License required.
26-2223A. Collection agency office requirements — Designation of responsible person.
26-2224. License application.
26-2225. Approval of license application.
26-2226. False or fraudulent debt reduction and elimination practices.
26-2227. Denial, suspension or revocation of license.
26-2228. Powers of the director.
26-2229. Contracts.
26-2229A. Requirement of fair, open and honest dealing — Prohibited practices.
26-2230. Branch offices.
26-2231. Renewal of license.
26-2232. Collection agency surety bonds.
26-2232A. Debt counselors, credit counselors, credit repair organizations — Bonds.
26-2233. Licensee accounts required.
26-2234. Examinations, investigations, records and payment of funds.
26-2235. Denial, suspension, revocation of permit. [Repealed.]
26-2236. Subpoenas.
26-2237. Fees — Disposition of funds.
26-2238. Violations — Penalties.
26-2239. Exemptions.
26-2240. Agent identification — Quarterly notice — Fee.
26-2243. Property right in accounts — Practice of law prohibited.
26-2244. Cease and desist orders, penalty.
26-2245. Director's power to enjoin violations.
26-2246. Closure or discontinuance of operations — Requirements.
26-2248. Administration of act.
26-2250. Foreign permittees. [Repealed.]
26-2251. Severability.

26-2222. Definitions. — As used in this act:

(1) "Agent" means any person who, for compensation or gain, or in the expectation of compensation or gain, contacts persons in Idaho in connection with the business activities of a licensee or person required to be licensed under this act.

(2) "Business funds" means all moneys belonging to or due a licensee or person required to be licensed in connection with the business activities authorized under this act.

(3) "Collection activities" means the activities enumerated in subsections (2) through (6) of section 26-2223, Idaho Code.

(4) "Collection agency" means a person who engages in any of the activities enumerated in subsections (2) through (6) of section 26-2223, Idaho Code.

(5) "Credit repair organization" means any person engaged in any of the activities enumerated in subsection (8) of section 26-2223, Idaho Code. A credit repair organization does not include:

(a) A consumer reporting agency, as defined in 15 U.S.C. section 1681a(f), that provides consumer reports based on information furnished by creditors or any affiliate or subsidiary of such consumer reporting agency as defined by rule promulgated by the director;

(b) A person who has an ongoing contractual arrangement with a consumer reporting agency, as described in subsection (5)(a) of this section, to obtain consumer reports from a consumer reporting agency for the purposes of:

(i) Reselling such report, or any information contained in or derived from such report, to a consumer; or

(ii) Monitoring information in such report on behalf of a consumer; or

(c) A person to the extent that such person advertises, markets, provides or facilitates consumer access to the products or services offered or provided by:

(i) An entity described in subsection (5)(a) of this section; or

(ii) A person described in subsection (5)(b) of this section.

(6) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed.

(7) "Creditor client" means any person who transfers or assigns to a collection agency licensee or person required to be so licensed under this act, any account, bill, claim or other indebtedness for collection purposes.

(8) "Creditor funds" means all funds due and owing a creditor by a licensee or person required to be licensed under this act.

(9) "Debt counselor" or "credit counselor" means any person engaged in any of the activities enumerated in subsection (7) of section 26-2223, Idaho Code.

(10) "Department" means the Idaho department of finance.

(11) "Director" means the director of the Idaho department of finance.

(12) "Licensee" means a person who has obtained a license under this act.

(13) "Net collections" means all funds that are due to creditors from the licensee pursuant to the contract between the licensee and creditor, or licensee and debtor without taking into account any offset or funds due from

the creditor to the licensee, because of the creditor having collected any part of the account due, plus all funds that the licensee agreed to return to debtors or that were not to be applied to debts.

(14) "Person" means any individual, corporation, association, partnership, limited liability partnership, trust, company, limited liability company, or unincorporated association.

History.

1970, ch. 53, § 1, p. 118; am. 1974, ch. 24, § 22, p. 592; am. 1987, ch. 295, § 1, p. 630; am. 1990, ch. 346, § 1, p. 930; am. 1997, ch. 370, § 1, p. 1176; am. 2002, ch. 190, § 1, p. 544; am. 2008, ch. 347, § 1, p. 938.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

A.L.R. What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5)). 159 A.L.R. Fed. 121.

26-2223. Collection agency, debt counselor, credit counselor, or credit repair organization — License required. — No person shall without complying with the terms of this act and obtaining a license from the director:

(1) Operate as a collection agency, debt counselor, credit counselor, or credit repair organization in this state.

(2) Engage, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.

(3) Solicit or advertise in this state to collect or receive payment for another of any account, bill, claim or other indebtedness.

(4) Sell or otherwise distribute in this state any system or systems of collection letters or similar printed matter where the name of any person other than the particular creditor to whom the debt is owed appears.

(5) Engage in any activity in this state which indicates, directly or indirectly, that a third party is or may be involved in effecting any collections.

(6) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

(7) Engage or offer to engage in this state in the business of receiving money from debtors for application or payment to or prorating of a debt owed to, any creditor or creditors of such debtor, or engage or offer to engage in this state in the business of providing counseling or other services to debtors in the management of their debts, or contracting with the debtor to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor.

(8) Engage or offer to engage in this state in the business of selling, providing or performing services to improve any consumer's credit record, credit history or credit rating, or providing advice or assistance to any consumer with regard to his credit record, credit history or credit rating.

History.

1970, ch. 53, § 2, p. 118; am. 1990, ch. 346, § 2, p. 930; am. 2002, ch. 190, § 2, p. 544; am. 2008, ch. 347, § 2, p. 940.

Compiler's Notes. The words "this act", as used in the introductory paragraph, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

Meaning of "Claim" Or "Indebtedness."

Under the corporation's agreement with the rental car agency, the corporation was obligated to collect monies owed to the agency from those who had damaged rental vehicles by their actions, and when the Idaho citizen caused damage to one of the agency's vehicles, the corporation attempted to process the claim; according to the agreement, the rental agency assigned all claims, rights, and causes of action to the corporation, such that the vehicle damage claim, which the corporation collected against the Idaho resident, constituted a claim or other indebtedness within the meaning of subsection (2) of this section. PurCo Fleet Servs. v. Idaho State Dep't of Fin., 140 Idaho 121, 90 P.3d 346 (2004).

26-2223A. Collection agency office requirements — Designation of responsible person. — (1) Each licensee shall maintain a home office licensed under this act as the licensee's principal location for collection activities. Each licensee must maintain a listed telephone number and must be open to the public during normal business hours on each business day, provided, however, that the director may in his discretion approve a request for opening during hours other than normal business hours or a portion of a business day. A business day within the meaning of this section does not include Saturdays, Sundays, or legal holidays.

(2) Each licensee shall designate a natural person, who meets the experience requirement of section 26-2224(6), Idaho Code, to be responsible for the collection activities carried on at each office of the licensee. If the person designated by the licensee for such purpose is not normally available at the licensee's designated location, then the licensee's collection activities in Idaho must begin with a written notice to each debtor setting forth a mailing address and a toll-free telephone number whereby a debtor may contact the designated responsible person during normal business hours.

History.

I.C.,§ 26-2223A, as added by 1974, ch. 154, § 1, p. 1379; am. 1987, ch. 297, § 1, p. 633; am. 1995, ch. 211, § 2, p. 715; am. 2008, ch. 347, § 3, p. 941.

Compiler's Notes. The words "this act", as used in subsection (1), refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2224. License application. — Every applicant for a license under this act shall file with the director an application in a form prescribed by the director that shall include:

(1) The name of the applicant; if the applicant is a corporation, a list of its officers and directors and their addresses; if the applicant is a partnership, a list of the partners and their addresses; or if the applicant is a limited liability company, a list of its members or managers and their addresses.

(2) The street address of the applicant's principal location.

(3) All names by which the applicant engages in collection activities.

(4) The names of all persons and organizations with which the applicant is affiliated, and the location of the principal office or place of business of each such affiliate.

(5) A complete description of the business to be conducted, or plan of operation contemplated, by the applicant in this state.

(6) The name, address and qualifications of a natural person possessing a minimum of three (3) years of experience related to the business to be conducted under this act who will supervise the applicant's office locations from which business activities in this state will be conducted.

(7) Copies of all contracts, forms, form letters, and advertisements or solicitations to be used by the applicant in its business activities under this act, which must accompany the application and be identified as exhibits by number.

(8) If the applicant is a corporation, a limited liability company, partnership, or limited liability partnership, a copy of its articles of incorporation, articles of organization, partnership agreement, or operating agreement, duly authenticated.

(9) A list of the names, business addresses and telephone numbers of all agents who will contact persons or solicit business for the applicant in this state.

(10) The name and business address of the applicant's agent for service of process located in this state.

(11) A nonrefundable application fee of one hundred fifty dollars ($150).

(12) An agreement of consent authorizing the director to examine any and all of the applicant's financial accounts used for business activities under this act.

(13) Such other information concerning the applicant as the director may reasonably require. Such application shall be executed and verified on oath by the applicant. Information required at the time of application, except for advertisements and solicitations, shall be updated and filed with the director as necessary to keep the information current.

History.

1970, ch. 53, § 3, p. 118; am. 1974, ch. 154, § 2, p. 1379; am. 1990, ch. 213, § 23, p. 930; am. 1995, ch. 211, § 3, p. 715; am. 2002, ch. 190, § 3, p. 544; am. 2008, ch. 347, § 4, p. 941.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2225. Approval of license application. — (1) The director shall act upon all applications for a license under this act. If the director determines that the requirements of this act have been met and all applicable fees paid, and the applicant is not otherwise unqualified for licensure, the director shall issue a license to the applicant.

(2) Each license issued under this section shall remain in full force and effect unless the licensee fails to satisfy the renewal requirements of this act, or the license is relinquished, suspended, terminated or revoked.

History.

I.C., § 26-2225, as added by 2008, ch. 347, § 6, p. 943.

Compiler's Notes. Former § 26-2225, which comprised 1970, ch. 53, § 4, p. 118; am. 1984, ch. 47, § 7, p. 76; am. 1997, ch. 370, § 2, p. 1176, was repealed by S.L. 2008, ch. 347, § 5.

The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347,

which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

26-2226. False or fraudulent debt reduction and elimination practices. — (1) No person shall obtain or attempt to obtain a fee, compensation or consideration from a person through a false or fraudulent representation or statement that a debt, loan, or extension of credit could or would be eliminated, reduced or substituted, if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the person making the representation or statement does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.

(2)(a) Whenever it appears to the director that a person has violated subsection (1) of this section, the director shall have the powers and remedies set forth in sections 67-2754 and 67-2755, Idaho Code, as well as the powers and remedies found in this chapter, as to any such violation.

(b) Any person who violates subsection (1) of this section shall be subject to the criminal proceedings and penalties set forth in sections 67-2757, 67-2758 and 67-2759, Idaho Code, as well as the criminal proceedings and penalties provided in this chapter.

History.
I.C., § 26-2226, as added by 2005, ch. 265, § 17, p. 810.

Compiler's Notes. Former § 26-2226, which comprised S.L. 1970, ch. 53, § 5, p. 118, was repealed by S.L. 1974, ch. 24, § 1.

26-2227. Denial, suspension or revocation of license. — (1) An application for a license may be denied or, after notice and the opportunity for a hearing, a license may be suspended or revoked by the director if he finds that facts or conditions exist which would have justified the director in refusing to grant a license had such facts or conditions been known to exist at the time the license was issued, or that the licensee or the applicant, or any officer, member, owner, manager or agent of a licensee or applicant:

(a) Has violated any provision of this act, the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, or any rule or order of the director under this act;

(b) Is not legally qualified to do business in this state;

(c) Has failed to retain a natural person with three (3) years of experience related to the type of business conducted by the licensee under this act to supervise each office from which business activities are conducted under this act;

(d) Has failed, refused or neglected to pay or remit to any creditor client the agreed portion of any sum collected by the applicant or licensee on any bill, claim, account or other indebtedness entrusted to such applicant or licensee for collection;

(e) Has failed to return to a debtor an amount that was not owed on his debt;

(f) Has made a material misstatement in the application for such license or renewal;

(g) Has obtained or attempted to obtain a license or renewal by fraud or misrepresentation;

(h) Has misappropriated or converted to his own use or improperly withheld moneys collected or held for any other person, except that a collection agency licensee may convert into business funds his portion of any moneys collected on behalf of a creditor client, pursuant to a written agreement with the creditor client and in compliance with this act;

(i) Has falsely represented himself as a licensee for the purpose of soliciting for or representing any business covered in this act;

(j) Has been convicted of, or a court of competent jurisdiction has entered a withheld judgment for any felony, or for a misdemeanor involving financial wrongdoing or moral turpitude;

(k) Has had a license substantially equivalent to a license under this act issued by another state revoked, suspended or denied; or

(*l*) Demonstrates a lack of fitness to engage in business activities authorized for a licensee under this act.

(2) The director may, after notice and the opportunity for a hearing, impose upon any licensee, or person required to be licensed under this act, a civil penalty of not more than five thousand dollars ($5,000) for each violation of this act.

(3) The director may, after notice and the opportunity for a hearing, impose upon a licensee, or person required to be licensed under this act, any sanction authorized by this section if the director finds that an agent of the licensee, or person required to be licensed under this act, has violated any provision of this act.

(4) The director may, in his discretion, and by an order issued in accordance with chapter 52, title 67, Idaho Code, prohibit a licensee from using an individual as an agent if the individual has violated any provision of this act, or any similar statute or rule of another state.

(5) Any denial, suspension or revocation of any license issued under this act shall be governed by chapter 52, title 67, Idaho Code.

History.
I.C., § 26-2227, as added by 2008, ch. 347, § 7, p. 943.

Compiler's Notes. Former § 26-2227, which comprised S.L. 1970, ch. 53, § 6, p. 118, was repealed by S.L. 1974, ch. 24, § 1.

The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

26-2228. Powers of the director. — In addition to any other duties authorized by law, the director shall:

(1) Administer and enforce the provisions and requirements of this act;

(2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this act, rule or order hereunder;

(3) Conduct examinations of the books and records of licensees related to business activities authorized under this act and conduct investigations as necessary and proper for the enforcement of the provisions of this act, rules or orders hereunder;

(4) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this act; and

(5) Require that all funds collected by the department under this act be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

History.
1970, ch. 53, § 7, p. 118; am. 1974, ch. 24, § 23, p. 744; am. 1974, ch. 154, § 6, p. 1379; am. 1995, ch. 211, § 4, p. 715; am. 2008, ch. 347, § 8, p. 944.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2229. Contracts. — (1) Contracts between collection agency licensees or collection agencies required to be licensed under this act and creditor clients shall be in writing.

(2) It shall be a violation of this act for any collection agency contract to:

(a) Authorize a collection agency to retain any sums collected on behalf of a creditor client, other than the regular collection fees or commissions authorized by this act;

(b) Penalize a creditor client for any unintentional error, mistake or omission in furnishing the correct name or address of any debtor to a collection agency; or

(c) Require the payment of any fee, commission or compensation in excess of fifty percent (50%) of the amount actually collected on any account, bill, claim or other indebtedness entrusted to the collection agency for collection. However, in the case that a collection agency collects interest on an account, the creditor client and the collection agency may agree in writing for division of such interest between them without such percentage limitation. Furthermore, in the case of the collection of checks dishonored by nonacceptance or nonpayment, the creditor client and the collection agency, by written agreement between them, may provide, in place of a percentage fee, for the payment of a set dollar amount collection fee not to exceed the amount provided in section 28-22-105, Idaho Code, which shall not be subject to the fifty percent (50%) limitation. Collection agreements to proceed under section 1-2301A, Idaho Code, shall be subject to the fifty percent (50%) limitation.

(3)(a) No debt counselor, credit counselor or credit repair organization licensed or required to be licensed under this act shall take or receive for services performed for any one (1) person more than fifteen percent (15%) of the amount received by it at any one (1) time from or on behalf of that person for payment or prorating to creditors, and no other charges shall be made or received for any such service.

(b) Debt counselors or credit counselors who do not receive, hold or disburse funds from debtors for payment to creditors shall not charge or accept as a fee for their services more than twenty percent (20%) of the principal amount of the debtor's unsecured debt at the time of contracting for services for the management of debt. In the event of cancellation of the contract by the debtor prior to its successful completion, the debt counselor or credit counselor shall refund fifty percent (50%) of any collected fees associated with the amount of debt remaining unsettled at the time of the termination of the contract.

History.
1970, ch. 53, § 8, p. 118; am. 1973, ch. 263, § 1, p. 538; am. 1974, ch. 24, § 24, p. 744; am. 1982, ch. 107, § 1, p. 306; am. 1984, ch. 47, § 8, p. 76; am. 1995, ch. 211, § 5, p. 715; am. 1996, ch. 373, § 4, p. 1269; am. 1997, ch. 370, § 3, p. 1176; am. 2008, ch. 347, § 9, p. 945.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2229A. Requirement of fair, open and honest dealing — Prohibited practices. — (1) Every licensee or person required to be licensed under this act and its agents shall deal openly, fairly, and honestly without deception in the conduct of its business activities in this state under this act.

(2) When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against collection agencies licensed or required to be licensed under the provisions of this act.

(3) In every instance where a collection agency licensee has a managerial or financial interest in a creditor client, or where a creditor client has a managerial or financial interest in a collection agency licensee, disclosure of such interest must be made on each and every contact with a debtor in seeking to make a collection of any account, claim, or other indebtedness.

(4) No collection agency licensee, or collection agency required to be licensed under this act, or agent of such collection agency shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses:

(a) Are expressly authorized by statute;

(b) Are allowed by court ruling against the debtor;

(c) Have been judicially determined;

(d) Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or

(e) Reasonably relate to the actual cost associated with processing a demand draft or other form of electronic payment on behalf of a debtor for a debt payment, provided that the debtor has preauthorized the method of payment and has been notified in advance that such payment may be made by reasonable alternative means that will not result in additional charges, fees or expenses to the debtor.

(5) No person shall sell, distribute or make use of solicitations, collection letters, demand forms or other printed matter which are made similar to or resemble governmental forms or documents, or legal forms used in civil or criminal proceedings.

(6) No person shall use any trade name, address, insignia, picture, emblem or any other means which creates any impression that such person is connected with or is an agency of government.

(7) No person licensed, or required to be licensed under this act, shall misappropriate, transfer, or convert to his own use or benefit, funds belonging to or held for another person in connection with business activities authorized under this act.

(8) No credit repair organization licensed, or required to be licensed under this act, shall charge or receive money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

(9) No person licensed or required to be licensed under this act shall make a representation or statement of material fact, or omit to state a material fact, in connection with the offer, sale or performance of any service authorized under this act, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading.

History.
I.C., § 26-2229A, as added by 1973, ch. 263, § 2, p. 538; am. 1993, ch. 165, § 1, p. 416; am. 1995, ch. 211, § 6, p. 715; am. 1997, ch. 370, § 4, p. 1176; am. 2008, ch. 347, § 10, p. 946.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

A.L.R. What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5)). 159 A.L.R. Fed. 121.

26-2230. Branch offices. — A licensee must register, in a manner prescribed by the director, each additional place of business from which activities authorized under this act are directly or indirectly conducted in this state. Registered locations shall be considered branches of the licensee. The licensee shall inform the director of the opening of a branch location at least thirty (30) days prior thereto, and no later than thirty (30) days after the closing of any branch location.

History.
I.C., § 26-2230, as added by 1995, ch. 211, § 8, p. 715; am. 1997, ch. 370, § 5, p. 1176; am. 2008, ch. 347, § 11, p. 947.

Compiler's Notes. The words "this act", as used in this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2231. Renewal of license. — (1) On or before the fifteenth day of March of each year, each licensee shall pay to the director a nonrefundable license renewal fee of one hundred dollars ($100) and shall file with the director a license renewal form providing complete information as required by the director.

(2) Failure to fully comply with the license renewal requirements of this section by the fifteenth day of March of each year shall result in automatic expiration of the license as of that date.

History.
1970, ch. 53, § 10, p. 118; am. 1984, ch. 47, § 9, p. 76; am. 1990, ch. 346, § 3, p. 930; am. 2002, ch. 190, § 4, p. 544; am. 2008, ch. 347, § 12, p. 948.

Compiler's Notes. The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2232. Collection agency surety bonds. — (1) Upon approval of the application and prior to the issuance of a license under this act, the applicant shall file in the department of finance a surety bond in a form prescribed by the director. The bond shall be executed by the applicant as

principal and by a surety company authorized to do business in this state, and shall be for the term of the license issued to the applicant. In lieu of the bond required by this section, a certificate of deposit issued by a financial institution authorized to conduct business in Idaho may be provided to the director in the same principal amount as required for the bond. The interest on the certificate of deposit shall be payable to the licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to do business under this act. The certificate of deposit must provide that it will remain in effect for at least three (3) years following discontinuance of operations, unless released earlier by the director when all statutory requirements have been met.

(2) The surety bond shall be executed to the state of Idaho in the sum of fifteen thousand dollars ($15,000) or upon renewal in such larger sum as hereinafter provided. In any case where a licensee or its representatives have failed to account for and pay over the proceeds of any collection made or money received for payment or prorating to creditors, or have failed to return to a debtor any sum received that was not to be applied to his debts, the creditor or debtor shall have in addition to all other legal remedies a right of action in his own name on such bond without the necessity of joining the licensee in such action. The bond shall be continuous in form and shall remain in full force and effect for the license period. The surety may cancel the bond provided that the surety shall in such event provide the licensee and the director with notice no less than thirty (30) days prior to cancellation of said bond. Such notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at its main office and to the director. In no event shall the liability of the surety for any and all claims against the bond exceed the face amount of such bond.

(3) Upon renewal of a license, the licensee shall supply the director with a statement of the preceding year's net collections. The amount of the bond upon renewal shall be in the amount of fifteen thousand dollars ($15,000), or two (2) times the average monthly net collections for the preceding year computed to the next highest one thousand dollars ($1,000), whichever sum is greater, up to a maximum of one hundred thousand dollars ($100,000).

History.

1970, ch. 53, § 11, p. 118; am. 1987, ch. 296, § 1, p. 632; am. 1987, ch. 301, § 1, p. 639; am. 1999, ch. 277, § 1, p. 691; am. 2008, ch. 347, § 13, p. 948.

Compiler's Notes. The words "this act", as used in subsection (1), refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2232A. Debt counselors, credit counselors, credit repair organizations — Bonds. — (1) Upon approval of the application and prior to the issuance of a license under this act, an applicant for a license as a debt counselor, credit counselor or credit repair organization shall file in the department of finance a surety bond in a form prescribed by the director. The bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state, and shall be for the term of the license issued to the applicant. In lieu of the bond required by this

section, a certificate of deposit issued by a financial institution authorized to conduct business in Idaho may be provided to the director in the same principal amount as required for the bond. The interest on the certificate of deposit shall be payable to the licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to do business under this act. The certificate of deposit must provide that it will remain in effect for at least three (3) years following discontinuance of operations, unless released earlier by the director when all statutory requirements have been met.

(2) The surety bond shall be executed to the state of Idaho in the sum of fifteen thousand dollars ($15,000) or upon renewal in such larger sum as hereinafter provided. In any case where a licensee or its representatives have failed to account for and pay over moneys accepted, received or held for another in the licensee's conduct of business authorized by this act, a person injured thereby shall have, in addition to all other legal remedies, a right of action in his own name on such bond without the necessity of joining the licensee in such action. The bond shall be continuous in form and shall remain in full force and effect for the license period. The surety may cancel the bond provided that the surety shall in such event provide the licensee and the director with notice no less than thirty (30) days prior to cancellation of the bond. Such notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at its main office and to the director. In no event shall the liability of the surety for any and all claims against the bond exceed the face amount of such bond.

(3) Upon renewal of a license, the licensee shall supply the director with a statement of the moneys accepted, received or held for another in the licensee's conduct of business authorized by this act. The amount of the bond upon renewal shall be in the amount of fifteen thousand dollars ($15,000), or two (2) times the average monthly amount over the preceding year of moneys accepted, received or held for another in the licensee's conduct of business authorized by this act computed to the next highest one thousand dollars ($1,000), whichever sum is greater, up to a maximum of one hundred thousand dollars ($100,000).

History.

I.C., § 26-2232A, as added by 2008, ch. 347, § 15, p. 950.

Compiler's Notes. Former § 26-2232A, which comprised I.C., § 26-2232A, as added by 1974, ch. 154, § 7, p. 1379; am. 1990, ch. 346, § 4, p. 930, was repealed by S.L. 2008, ch. 347, § 14.

The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

26-2233. Licensee accounts required. — (1) Every licensee under this act that receives or holds funds belonging to another in connection with the business activities authorized by this act shall, in its own name, establish and maintain a separate trust account for deposit and remittance of such funds in a financial institution, the deposits of which are insured by the federal deposit insurance corporation. A licensee may not, directly or indirectly, misappropriate, misapply or borrow money held in trust.

(2) Every licensee under this act shall establish and maintain a separate business account for the licensee's business funds and moneys in a financial

institution, the deposits of which are insured by the federal deposit insurance corporation.

History.
1970, ch. 53, § 12, p. 118; am. 1983, ch. 252, § 1, p. 672; am. 1995, ch. 211, § 9, p. 715; am. 1997, ch. 370, § 6, p. 1176; am. 2008, ch. 347, § 16, p. 950.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2234. Examinations, investigations, records and payment of funds. — (1) The director or his duly authorized representative may make an annual examination, or more frequently in the director's discretion, of the licensee's business locations from which activities authorized under this act are conducted, and for that purpose the director shall have free access during normal business hours to the offices and places of business, and to the books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults used by a licensee for its operations under this act.

(2) The director may conduct public or private investigations and examinations within or outside of this state which the director considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act. For that purpose the director shall have free access during normal business hours to the offices and places of business, and to the books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults used by a licensee for its operations under this act.

(3) The cost of examination and any investigation shall be paid to the director by each licensee so examined or investigated and the director may maintain an action for the recovery of such costs against the licensee or against the surety providing the bond to indemnify the state for such expenditures as required by this act. The cost shall be fixed annually by the director, but shall not exceed fifty dollars ($50.00) per hour.

(4) Each collection agency licensee shall acknowledge in writing each account received for collection and shall maintain a record of such account, and shall make a permanent record of all sums collected and of all disbursements made. Every collection agency licensee shall keep and preserve all records relating to accounts received for collection, moneys collected, receipts, and disposal or disbursement of all creditors' funds for a period of three (3) years after the final disposition of any account. It shall be unlawful for any person to intentionally make any false entry, omit to make a necessary entry, mutilate, secrete away, destroy or otherwise dispose of any record referenced in this subsection, provided a record may be disposed of after the three (3) year period heretofore provided.

(5) Every collection agency licensee shall, within thirty (30) days following the end of each calendar month, remit to his creditor clients all funds due them resulting from collections made by the licensee during said calendar month. Such licensees shall provide each of their creditor clients a

written statement of all moneys collected on behalf of such creditor clients and any payments made to such creditor clients within thirty (30) days following the end of each calendar month.

(6) Every licensee shall maintain books and records, including financial records in accordance with generally accepted accounting principles, in a manner that will enable the director to determine whether the licensee is complying with the provisions of this act.

(7) The director may impound the accounts, including all operating and trust accounts held in any financial institution, of any licensee or person required to be licensed under this act who receives, holds or disburses consumer funds, if the director deems it in the public interest and good cause exists therefor, in accordance with section 67-5247, Idaho Code.

History.

1970, ch. 53, § 13, p. 118; am. 1974, ch. 24, § 25, p. 744; am. 1993, ch. 165, § 2, p. 416; am. 2002, ch. 190, § 5, p. 544; am. 2008, ch. 347, § 17, p. 951.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2235. Denial, suspension, revocation of permit. [Repealed.]

Compiler's Notes. This section, which comprised 1970, ch. 53, § 14, p. 118; am. 1974, ch. 24, § 26, p. 744; am. 1974, ch. 154, § 3, p. 1379; am. 1990, ch. 346, § 5, p. 930; am. 1993, ch. 165, § 3, p. 416; am. 1997, ch. 370, § 7, p. 1176, was repealed by S.L. 2008, ch. 347, § 18.

26-2236. Subpoenas. — The director shall have the power to issue subpoenas as necessary to determine whether a person has violated any provision of this act, rule or order thereunder, to swear witnesses and to take the testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in district courts of this state in civil cases. Any party to a proposed revocation or suspension of a license shall have the right of subpoena to compel the attendance of witnesses and produce all reasonably necessary books and writings on his behalf. In case any witness shall fail or refuse to comply with a subpoena to appear before the director, the clerk of the district court of the county in which the administrative proceedings are held shall, upon demand of the director, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of a subpoena issued by the district court.

History.

1970, ch. 53, § 15, p. 118; am. 1993, ch. 165, § 4, p. 416; am. 2008, ch. 347, § 19, p. 952.

Compiler's Notes. The words "this act", as used in this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, in the first sentence, deleted "and bring before him any person, book, or writing in this state" following "subpoenas" and inserted "as necessary to determine whether a person has violated any provision of this act, rule or order thereunder"; in the second sentence, substituted "license" for "permit" and "writings" for

"writing" and inserted "reasonably necessary"; in the last sentence, substituted "violation of a subpoena issued by the district court" for "violation of any other subpoena issued from the district court"; and deleted the former last sentence, which read: "Any revocation or suspension of any permit or license provided for by this chapter shall be governed by chapter 52, title 67, Idaho Code."

26-2237. Fees — Disposition of funds. — All fees provided for in this act shall be paid to the director and by him remitted to the state treasurer pursuant to section 59-1014, Idaho Code, and all such funds shall be deposited to the credit of the finance administrative account in the state dedicated fund.

History.
1970, ch. 53, § 16, p. 118; am. 1974, ch. 24, § 27, p. 744; am. 1984, ch. 47, § 10, p. 76; am. 2008, ch. 347, § 20, p. 953.

Compiler's Notes. The words "this act", as used in this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, substituted "this act" for "this chapter."

26-2238. Violations — Penalties. — (1) Any person who engages in activities authorized under this act, who fails to establish and maintain a separate trust account as required under this act, or fails to disburse funds in accordance with the requirements of this act, or misappropriates, transfers, or converts to his own use or benefit, funds belonging to or held for another person, shall, upon conviction, be guilty of a felony punishable by a fine not to exceed five thousand dollars ($5,000) per violation or by imprisonment for not more than five (5) years, or both.

(2) Any person, except a person exempt under section 26-2239, Idaho Code, who engages in activities authorized under this act without first obtaining a license as required by this act shall, upon conviction, be guilty of a felony punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment for not more than five (5) years, or both.

(3) Any person who shall fail to comply with any of the other provisions of this act shall, upon conviction, be guilty of a misdemeanor.

History.
1970, ch. 53, § 17, p. 118; am. 1997, ch. 370, § 8, p. 1176; am. 2008, ch. 347, § 21, p. 953.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2239. Exemptions. — The provisions of this act shall not apply to the following:

(1) Persons licensed to practice law in this state, to the extent that they are retained by their clients to engage in activities authorized by this act, and such activities are incidental to the practice of law. Such exemption shall not apply to an attorney engaged in a separate business conducting the activities authorized by this act;

(2) Any regulated lender as defined in section 28-41-301, Idaho Code, and its subsidiary, affiliate or agent to the extent that the regulated lender, subsidiary, affiliate or agent collects for the regulated lender or engages in

acts governed by this act which are incidental to the business of a regulated lender;

(3) Any bank, trust company, credit union, insurance company or industrial loan company authorized to do business in this state;

(4) Any federal, state or local governmental agency or instrumentality;

(5) Any real estate broker or real estate salesman licensed under the laws of and residing within this state while engaged in acts authorized by his real estate license;

(6) Any person authorized to engage in escrow business in this state while engaged in authorized escrow business;

(7) Any mortgage company engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code, except a mortgage company engaged in a separate business conducting the activities authorized by this act;

(8) Any court appointed trustee, receiver or conservator;

(9) Any telephone corporation, as defined in subsection (10) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent;

(10) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom he is so related or affiliated and if the principal business of such person is not the collection of debts.

History.

1970, ch. 53, § 18, p. 118; am. 1990, ch. 346, § 6, p. 930; am. 1993, ch. 165, § 5, p. 416; am. 2003, ch. 112, § 1, p. 355; am. 2008, ch. 347, § 22, p. 953; am. 2013, ch. 54, § 8, p. 108.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

The 2013 amendment, by ch. 54, substituted "section 28-41-301" for "section 28-41-301(37)" near the beginning of subsection (2).

26-2240. Agent identification — Quarterly notice — Fee. — Each applicant for a license under this act, with its initial license application, and each licensee at annual renewal, shall file with the director a list of all agents including the name of each agent and any other identifying information the director may require. A fee of twenty dollars ($20.00) for each listed agent shall accompany the list. Each licensee shall notify the director in writing of any additions to its agent list no less often than every calendar quarter. A fee of twenty dollars ($20.00) shall be paid to the director for each additionally identified agent in the quarterly notification of additions to a licensee's agent list. An agent is not required to be listed, nor the fee paid therefor, unless the agent acted for the licensee for more than thirty (30) business days.

History.
I.C., § 26-2240, as added by 1997, ch. 370, § 10, p. 1176; am. 2008, ch. 347, § 23, p. 954.

Compiler's Notes. The words "this act", as used in this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, rewrote the section to the extent that a detailed comparison is impracticable.

26-2243. Property right in accounts — Practice of law prohibited. — A licensee under this act shall have a property right in any account assigned to it for collection; provided, however, no right herein granted shall authorize such licensee to engage in the practice of law.

History.
1970, ch. 53, § 22, p. 118; am. 2008, ch. 347, § 24, p. 954.

Compiler's Notes. The words "this act", as used in this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, twice substituted "licensee" for "permit holder," and inserted "under this act."

26-2244. Cease and desist orders, penalty. — (1) Whenever it appears to the director that it is in the public interest, he may order any person to cease and desist from acts, practices, or omissions which constitute a violation of this act or a rule adopted or an order issued under this act.

(2) Whenever, after notice and the opportunity for a hearing, the director finds that any person has engaged in any act, practice, or omission constituting a violation of any provision of this act or a rule adopted or an order issued under this act, the director may order the person to cease and desist from such acts, practices or omissions and:

(a) Impose a civil penalty of not more than five thousand dollars ($5,000) for each violation upon any person found to have violated any provision of this act or a rule adopted or an order issued under this act;

(b) Issue an order restoring to any person in interest any consideration that may have been acquired or transferred in violation of this act or a rule adopted or an order issued under this act; and

(c) Issue an order that the person violating this act or a rule adopted or an order issued under this act pay costs, which in the discretion of the director may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts.

History.
1970, ch. 53, § 23, p. 118; am. 1974, ch. 24, § 28, p. 744; am. 1990, ch. 346, § 9, p. 930; am. 1993, ch. 165, § 7, p. 416; am. 2002, ch. 190, § 6, p. 544; am. 2008, ch. 347, § 25, p. 955.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, throughout the section, substituted "act or a rule adopted or an order issued under this act" for "chapter"; in the introductory paragraph in subsection (2), inserted "the opportunity for" substituted "engaged in any act, practice, or omission constituting a violation of" for "violated," and deleted "which constituted a violation of this chapter" from the end; and in subsection (2)(a), substituted "five thousand dollars ($5,000)" for "two thousand five hundred dollars ($2,500)."

26-2245. Director's power to enjoin violations. — (1) Whenever it appears to the director that any person, or employee or agent thereof, has

engaged in or is about to engage in any act or practice or omission constituting a violation of any provision of this act, or any rule or order issued hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts, practices or omissions and to enforce compliance with this act or any rule adopted or order issued hereunder. Upon a showing that a person, or employee or agent thereof, has engaged in or is about to engage in an act, practice or omission constituting a violation of this act or any rule adopted or order issued hereunder, a permanent or temporary injunction, or restraining order shall be granted and a receiver or conservator may be appointed, which may be the director, for the defendant's assets. The director shall not be required to furnish a bond.

(2) In addition to the foregoing, the director, in his discretion and upon a showing in any court of competent jurisdiction that a person has violated any provision of this act or rule adopted or order issued hereunder, may be granted the following additional remedies:

(a) An order restoring to any person in interest any consideration that may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, rule or order issued hereunder, pay a civil penalty to the department in an amount not to exceed five thousand dollars ($5,000) for each violation;

(c) An order allowing the director to recover costs, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts; and

(d) An order granting other appropriate remedies upon a proper showing.

History.
1970, ch. 53, § 24, p. 118; am. 2002, ch. 190, § 7, p. 544; am. 2008, ch. 347, § 26, p. 955.

Compiler's Notes. The words "this act", as used throughout this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

The 2008 amendment, by ch. 347, throughout the section, substituted "act" for "chapter"; in subsection (1), twice inserted "issued" and "omission," or similar language, inserted "adopted or order issued," "adopted," and "which may be the director"; in the introductory paragraph in subsection (2), inserted "adopted" and "issued"; and in subsection (2)(b), inserted "issued," and substituted "five thousand dollars ($5,000)" for "two thousand five hundred dollars ($2,500)."

26-2246. Closure or discontinuance of operations — Requirements. — (1) Whenever the operations of a collection agency licensee under this act are closed or discontinued due to revocation, termination, or relinquishment of a collection agency license, or for any other reason, the collection agency shall, within thirty (30) days following the closure or discontinuance of operations, furnish the director with sufficient proof in a form to be determined by the director that:

(a) The collection agency has remitted to all of its creditor clients all moneys collected on their behalf and due such creditor clients;

(b) All collection accounts, judgments obtained, and other accounts have been returned to the creditor clients or other proper parties, and if appropriate, assigned by the collection agency to its creditor clients or other proper parties; and

(c) All valuable papers, documents, judgments and other property pro-

vided to the collection agency by its creditor clients or other parties in connection with the collection agency's collection activities have been returned to the creditor clients or other proper parties.

(2) A collection agency which holds a license issued pursuant to this act, upon closure or discontinuance of its operations, shall maintain the bonds required of such licensee to conduct a collection agency business until a final accounting of its affairs, as set forth in subsection (1) of this section, has been filed with and approved by the director.

(3) Whenever the operations of a collection agency are closed or discontinued as set forth in subsection (1) of this section, in the event the collection agency does not complete all requirements of such subsection within thirty (30) days following the closure or discontinuance of operations, upon demand by the director, the collection agency shall permit the director to take possession of its business records, bank accounts, including creditor client trust accounts, other property belonging to its creditor clients or third parties, and its assets. The director may then liquidate the collection agency's business, return any moneys owed to the collection agency's creditor clients, return the collection agency's accounts to its creditor clients, return or assign any judgments to the agency's creditor clients, and take any other actions which are reasonably necessary to cause the collection agency to liquidate its assets and to comply with subsection (1) of this section.

(4) If a collection agency refuses to permit the director to take possession of its business records, bank accounts, creditor client trust accounts, other property belonging to its creditor clients or third parties and its assets, as set forth in subsection (3) of this section, the director may apply to a court of competent jurisdiction in the county of the collection agency's principal place of business for the appointment of a receiver or conservator as set forth in section 26-2245(1), Idaho Code. Such receiver or conservator may be the director.

(5) The expenses of the receiver or conservator and attorney's fees, and all expenses necessarily incurred in liquidation of the collection agency, shall be paid out of the funds in the control of the director or conservator, to the extent those funds exceed any sums due and owing to the collection agency's creditor clients or other proper parties. To the extent funds in the control of the receiver are not sufficient to pay all sums due and owing to the collection agency's creditor clients or other proper parties and to pay the costs of a receiver or conservator and of liquidation of the collection agency, the collection agency and its owners, shareholders, or interest holders shall be responsible for the balance of any reasonably necessary costs and fees of liquidation.

History.

I.C., § 26-2246, as added by 2008, ch. 347, § 28, p. 956.

Compiler's Notes. Former § 26-2246, which comprised 1970, ch. 53, § 25, p. 118; am. 1974, ch. 24, § 29, p. 744, was repealed by S.L. 2008, ch. 347, § 27.

The words "this act", as used in subsection (1), refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

26-2248. Administration of act. — The administration of the provi-

sions of this act shall be under the general supervision and control of the director, subject to chapter 52, title 67, Idaho Code. The director may from time to time adopt, amend, and rescind rules and issue orders necessary to carry out the provisions of this act. No rule or order may be made unless the director finds that the action is necessary or appropriate for the public interest or for the protection of the public consistent with the purposes of this act.

History.
1970, ch. 53, § 27, p. 118; am. 2008, ch. 347, § 29, p. 957.

Compiler's Notes. The words "this act", as used in the section heading and in the text, refer to S.L. 1970, Chapter 53, which is generally codified as §§ 26-2222 to 26-2249.

The 2008 amendment, by ch. 347, in the second sentence, substituted "adopt" for "make" and "rescind rules and issue orders" for "rescind such rules, regulations and forms"; and in the last sentence, substituted "No rule or order" for "No rule, regulation or form" and "protection of the public" for "protection of creditors and debtors."

26-2250. Foreign permittees. [Repealed.]

Compiler's Notes. This section, which comprised 1976, ch. 345, § 1, p. 1150; am. 1993, ch. 165, § 8, p. 416; am. 1995, ch. 211, § 10, p. 715; am. 1997, ch. 370, § 11, p. 1176, was repealed by S.L. 2008, ch. 347, § 30.

26-2251. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.
I.C., § 26-2251, as added by 2008, ch. 347, § 31, p. 957.

Compiler's Notes. Former § 26-2251, which comprised I.C., § 26-2251, as added by 1993, ch. 165, § 10, p. 416; am. 2002, ch. 190, § 8, p. 544, was repealed by S.L. 2008, ch. 347, § 30.

The words "this act", as used in this section, refer to S.L. 2008, Chapter 347, which is codified as §§ 26-2222 to 26-2240, 26-2243 to 26-2248, 26-2251, and 1-2301A.

CHAPTER 25

LOAN BROKERS

SECTION.
26-2501. Definition.
26-2505. Administration — Enforcement — Actions for monetary relief.

26-2501. Definition. — "Loan broker" means any person, corporation, partnership or other business entity which offers for compensation, in this state, to arrange for a loan or other extension of credit. "Loan broker" includes a person, corporation, partnership or other business entity which, for compensation or for no compensation, advertises, solicits, or offers to make or to obtain for others a loan or other extension of credit.

History.
I.C., § 26-2501, as added by 1979, ch. 298, § 1, p. 780; am. 2005, ch. 265, § 18, p. 810.

26-2505. Administration — Enforcement — Actions for monetary relief. — (1) The director of the Idaho department of finance shall have the power to administer and enforce the provisions of this chapter. Whenever it appears to the director that a loan broker has violated section 26-2503, Idaho Code, the director shall have the powers and remedies set forth in sections 67-2754, 67-2755, 67-2757, 67-2758 and 67-2759, Idaho Code.

(2) The receiving of any fee, interest or other charge in violation of this chapter shall also be deemed an unfair and deceptive practice in violation of the Idaho consumer protection act; provided however, no person aggrieved by a violation of this chapter can recover or attempt to recover monetary relief under both this chapter and the Idaho consumer protection act, but rather such person must elect whether to file an action pursuant to this chapter or the Idaho consumer protection act.

History.

I.C., § 26-2505, as added by 1979, ch. 298, § 1, p. 780; am. 1992, ch. 28, § 3, p. 89; am. 2005, ch. 265, § 19, p. 810.

Compiler's Notes. Section 18 of S.L. 2005, ch. 265 is compiled as § 26-2501.

Section 20 of S.L. 2005, ch. 265 provides: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CHAPTER 27

BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS

SECTION.
26-2701. Purpose of chapter.
26-2706. Required recordkeeping — Independent audit — Application to outside recordkeepers — Report required.
26-2707. Annual report to legislature required.
26-2709. Requirements for licensure.
26-2711. Use of BIDCO name restricted — Exception.
26-2714. Corporate name — Directors — Dividends — Restriction on use of public moneys.
26-2715. Offices — Location.
26-2716. Business activities — Corporate powers.
26-2718. BIDCO acquiring another firm — Application — Requirements.
SECTION.
26-2720. Conflict of interest — Defined.
26-2723. Violation of chapter — Director's powers — Hearings — Cease and desist.
26-2724. Violation of chapter — Removal of subject person.
26-2725. Indictment or conviction of a crime — Removal of subject person.
26-2727. Order to refrain from offering financial assistance — Conditions — Hearing.
26-2729. Violation of chapter — Civil penalties.
26-2731. Construction — Promulgation of rules — Applicability of chapter.

26-2701. Purpose of chapter. — The purposes of this chapter are to:

(1) Promote economic development by encouraging the formation of business and industrial development corporations, a new type of private institution, to help meet the financing assistance and management assistance needs of business firms.

(2) Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development corporations to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration pursuant to section 7(a) of the small

business act, Public Law 85-536, 15 U.S.C. section 636(a), and other programs for which they may be eligible.

(3) Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement, and to promote competent management, accurate recordkeeping, and appropriate communication with shareholders in order to provide the following:

(a) Comfort to prospective shareholders in order to facilitate equity investments in business and industrial development corporations;

(b) Comfort to prospective debt sources in order to facilitate the borrowing of money by business and industrial development corporations; and

(c) Protection of the general reputation of business and industrial development corporations as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be expended or granted and that such activities are governmental functions and serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

History.
I.C., § 26-2701, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 1, p. 406.

26-2706. Required recordkeeping — Independent audit — Application to outside recordkeepers — Report required. — (1) A licensee shall make and keep books, accounts, and other records in such a form and manner as the director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the director may specify.

(2) The director may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value. In addition, the director may require an appraisal of any assets of a licensee by an independent appraiser approved by the director.

(3) The director may require a licensee to file with the director, not more than ninety (90) days after the close of each calendar year or a longer period if specified by the director, an audit report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is an Idaho nonprofit corporation, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant subject to approval by the director in accordance with generally accepted accounting principles.

(b) An unqualified report, certificate, or opinion of the independent certified public accountant or independent public accountant subject to approval by the director who performs the audit, stating that the financial

statements were prepared in accordance with generally accepted accounting principles.

(c) Other information that the director may require.

(4) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this chapter applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

(5) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this chapter applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.

(6) If the director considers it expedient, the director may require any particular licensee to obtain the approval of the director before permitting another person to make or keep any of the books, accounts, or other records of the licensee.

(7) Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the director such reports as and when the director may require. A report shall be in such a form and shall contain such information as the director may require.

History.
I.C., § 26-2706, as added by 1989, ch. 252, § 1, p. 601; am. 2001, ch. 86, § 1, p. 221.

26-2707. Annual report to legislature required. — (1) The director shall publish annually and provide to the house business committee and senate commerce and labor committee, or the appropriate germane legislative committees, information on the impact of this chapter in promoting economic development in this state. At a minimum, the information shall include aggregate statistics on each of the following:

(a) The number and dollar amount of provisions of financing assistance made by licensees to business firms.

(b) The number and dollar amount of provisions of financing assistance made by licensees to business firms classified in broad categories of industry such as divisions of the standard industrial classification manual.

(c) The number and dollar amount of provisions of financing assistance made by licensees to minority owned business firms and to woman owned business firms.

(d) Estimates of the number of jobs created or retained.

(e) Estimates of the number and dollar amount of any financial assistance provided to licensed BIDCOs, or investments in individual licensed BIDCOs, for the purpose of fostering economic development by any state or federal agency, or by public or quasi-public entities, including the public employee retirement system.

History.
I.C., § 26-2707, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 2, p. 406.

26-2709. Requirements for licensure. — (1) An Idaho corporation may apply to the director for licensure as a BIDCO. A person other than an Idaho corporation shall not apply for a license.

(2) After a review of information regarding the directors, officers, and controlling persons of the applicant, a review of the applicant's business plan, including at least three (3) years of detailed financial projections and other relevant information, and a review of additional information considered relevant by the director, the director shall approve an application for a license if, and only if, the director determines all of the following:

(a) The applicant has a net worth, or firm financing commitments which demonstrate that the applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid form available to provide financing assistance, that is adequate for the applicant to transact business as a BIDCO as determined under subsection (3) of this section.

(b) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; each director and officer of the applicant is competent to perform his or her functions with respect to the applicant; and the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a BIDCO.

(c) It is reasonable to believe that the applicant, if licensed, will comply with this chapter.

(d) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.

(3) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO, the director shall consider the types and variety of financing assistance that the applicant plans to provide; the experience that the directors, officers, and controlling persons of the applicant have in providing financing and managerial assistance to business firms; the financial projections and other relevant information from the applicant's business plan; and whether the applicant intends to operate as a profit or nonprofit corporation. Except as otherwise provided in this chapter, the director shall require a minimum net worth of not less than one million dollars ($1,000,000) and not more than ten million dollars ($10,000,000). The director may require a minimum net worth of less than one million dollars ($1,000,000), but not less than five hundred thousand dollars ($500,000), if, in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including, but not limited to, funded overhead, low overhead, or specialized opportunities.

(4) For the purposes of subsection (2) of this section, the director may find any of the following:

(a) That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person, or a director or officer of a controlling person, has been convicted of, entered a plea of

guilty to, has been found guilty of, or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(b) That it is not reasonable to believe that an applicant, if licensed, will comply with this chapter, if the applicant has been convicted of, entered a plea of guilty to, has been found guilty of, or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(5) For purposes of subsection (2) of this section, subsection (4) of this section shall not be considered to be the only grounds upon which the director may find that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with the provisions of this chapter.

History.
I.C., § 26-2709, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 3, p. 406.

26-2711. Use of BIDCO name restricted — Exception. — (1) Except as otherwise provided in subsection (2) of this section, a person transacting business in this state, other than a licensee, shall not use a name or title which indicates that the person is a business and industrial development corporation including, but not limited to, use of the term "BIDCO," and shall not otherwise represent that the person is a business and industrial development corporation or a licensee.

(2) Before being issued a license under this chapter, an Idaho corporation that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the corporation is a business and industrial development corporation, the acts necessary to apply for and obtain a license and to otherwise prepare to commence transacting business as a licensee. Such a corporation shall not represent that it is a licensee until after the license has been obtained. A licensee shall not misrepresent the meaning or effect of its license.

History.
I.C., § 26-2711, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 4, p. 406.

26-2714. Corporate name — Directors — Dividends — Restriction on use of public moneys. — (1) The corporate name of each licensee may include the phrase "Business and Industrial Development Corporation" or may include the word "BIDCO." A licensee shall not transact business under a name other than its corporate name.

(2) The board of directors of each licensee shall consist of not less than seven (7) directors. The board of directors of each licensee shall hold a meeting not less than once each calendar quarter.

(3) Within thirty (30) days after the death, resignation, or removal of a director or officer; the election of a director; or the appointment of an officer, the licensee shall notify the director in writing of the event and shall provide any additional information which the director may require.

(4) A licensee shall not pay, or obligate itself to pay, a cash dividend or dividend in kind to its shareholders, unless that payment is consistent with

a dividend policy which has been adopted by the licensee and approved by the director. In reviewing dividend policies under this section, the director shall be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs, while at the same time protecting against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO. The director may at any time withdraw any previous approval of a dividend policy if the director determines that the withdrawal is necessary to prevent unsafe or unsound acts.

(5) Without the prior approval of the director, a licensee shall not buy back, or obligate itself to buy back a share of stock from a shareholder.

(6) Any public moneys received by a licensee shall be applied by the licensee solely to providing financing assistance or management assistance to business firms with a home office in Idaho.

History.
I.C., § 26-2714, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 5, p. 406.

26-2715. Offices — Location. — (1) A licensee shall maintain not less than one (1) office in this state.

(2) A licensee, with the approval of the director, may maintain an office at any place outside this state.

(3) Each office of a licensee shall be located in a place which is reasonably accessible to the public.

(4) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.

(5) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

(6) Upon written notice to the director, a licensee may establish, relocate, or close an office.

History.
I.C., § 26-2715, as added by 1989, ch. 252, § 1, p. 601; am. 2001, ch. 86, § 2, p. 221.

26-2716. Business activities — Corporate powers. — (1) The business of a licensee shall be the business of providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.

(2) In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter. The powers of a licensee include, but are not limited to, all of the following:

(a) To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes, or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured, and may involve equity features including, but not limited to, provisions for conversion to stock and warrants to purchase stock.

(b) To make contracts. Such contracts may include contracts to provide management assistance to business firms, which contracts shall be in writing, and the terms of which shall govern all aspects of the relationship between the licensee and the business firm regarding the management assistance provided by the licensee.

(c) To incur and pay necessary and incidental operating expenses.

(d) To purchase, receive, hold, lease, or otherwise acquire, or to sell, convey, mortgage, lease, pledge, or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.

(e) To make donations for charitable, educational, research, or similar purposes.

(f) To implement a reasonable and prudent policy for conserving and investing its money before the money is used to provide financing assistance to business firms or to pay the expenses of the licensee.

History.
I.C., § 26-2716, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 6, p. 406.

26-2718. BIDCO acquiring another firm — Application — Requirements. — (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate; another licensee; or a director, officer, principal shareholder, or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

(a) If and to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm, a licensee that had provided financing assistance to a business firm may acquire and hold control of that business firm. Unless the director approves a longer period, a licensee holding control of a business firm under this subdivision shall divest itself of the interest which constitutes holding control as soon as practicable or within three (3) years after acquiring that interest, whichever is sooner.

(b) With the approval of the director, a licensee may acquire and hold control of a corporation which is licensed as a small business investment company under the small business investment act of 1958, Public Law 85-699, 72 Stat. 689 or any successor statute.

(c) With the approval of the director, a licensee may acquire and hold control of a company which is a local development company in accordance with the small business investment act of 1958, whether or not such a development company is or may become certified by the small business administration under section 503 of the small business investment act of 1958, 15 U.S.C. section 697 or any successor statute.

(d) With the approval of the director, a licensee may acquire and hold control of another business firm which is engaged in no business other

than the business of providing financing assistance and management assistance to business firms.

(e) With the approval of the director, a licensee may acquire and hold control of a business firm not referred to in paragraphs (a) through (d) of this subsection. The director shall not approve an application under this subdivision unless the director determines that such an approval will not cause the amount of the licensee's investments in business firms covered by this subdivision to exceed fifteen percent (15%) of the amount of the assets of the licensee and that in the director's judgment such an approval will promote the purposes of this chapter. An approval by the director under this subdivision shall be for a period of not more than three (3) years, except that in a particular case the director may subsequently extend the period beyond three (3) years if the director determines that a longer period is needed and is consistent with the purposes of this chapter.

(2) If the director fails to issue an order approving or denying an application under subsection (1)(b) or (c) of this section, within forty-five (45) days from receipt by the director of an application which complies with section 26-2704, Idaho Code, the application shall be considered approved by the director.

(3) For the purposes of subsection (1) of this section, "hold control" means ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(a) For a business firm with outstanding voting securities held by fewer than fifty (50) shareholders, forty percent (40%) of the outstanding voting securities.

(b) For a business firm with outstanding voting securities held by fifty (50) or more shareholders, twenty-five percent (25%) of the outstanding voting securities.

(4) If a licensee anticipates acquiring and holding control of a business firm under subsection (1)(a) of this section, the licensee shall file with the director a plan for acquiring and holding control of the business firm that shall include at least all of the following:

(a) The reasons it is necessary for the licensee to acquire and hold control of the business firm.

(b) The percentage of outstanding voting securities of the business firm the licensee plans to own.

(c) The licensee's proposed course of action upon obtaining control of the business firm.

(d) The length of time the licensee anticipates it will be necessary to hold control of the business firm.

(5) The director may require the licensee to demonstrate the necessity for the licensee to hold control of a business firm under subsection (1)(a) of this section.

History.

I.C., § 26-2718, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 7, p. 406.

26-2720. Conflict of interest — Defined. — (1) For purposes of this section:

(a) "Associate" means that term as defined in section 26-2702, Idaho Code.

(b) "Relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, sister-in-law, grandparent, grandchild, nephew, niece, uncle, or aunt.

(2) If a licensee provides financing assistance to a business firm or engages in another business transaction, and if that financing assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the financing assistance or engages in the transaction shall not be less favorable to the licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the transaction did not involve a potential conflict of interest. Each person who participates in the decision of the licensee relating to a transaction described in this section and has knowledge of a potential conflict of interest involving that transaction shall disclose the potential conflict of interest in the financing documents of the transaction or, for a business transaction not involving financing assistance, in another appropriate document.

(3) For the purposes of subsection (2) of this section, transactions engaged in by a licensee which involve a potential conflict of interest include, but are not limited to, the following:

(a) Providing financing assistance to a principal shareholder of the licensee, to a person controlled by a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of the licensee.

(b) Providing financing assistance to a business firm to which a principal shareholder of the licensee: a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a licensee, or a person controlled by a principal shareholder of the licensee provides or plans to provide contemporaneous financing assistance.

(c) Providing financing assistance to a business firm which has or is expected to have a substantial business relationship with another business firm which has a director, officer, or controlling person who is also a director, officer, or controlling person of the licensee or who is the spouse of a director, officer, or controlling person of the licensee.

(d) Providing financing assistance to a business firm if that business firm, or a director, officer, or controlling person of that business firm, contemporaneously has lent or will lend money to an associate of the licensee.

(e) Providing financing assistance for the purchase of property of an associate or principal shareholder of the licensee.

(f) Selling or otherwise transferring any of its assets to an associate or principal shareholder of the licensee.

(4) Nothing in this section or in any other section of this chapter limits the authority of the director to determine that an act involves a conflict of interest and therefore is an unsafe or unsound act.

(5) Except with the approval of the director, a licensee shall not provide

a lien on or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, another person.

History.
I.C., § 26-2720, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 8, p. 406.

26-2723. Violation of chapter — Director's powers — Hearings — Cease and desist. — (1) If in the opinion of the director, a person violates, or there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may bring an action in the district court to enjoin the violation or to enforce compliance with the provisions of this chapter. Upon a showing that a person has engaged in or is about to engage in, an act or practice constituting a violation of the provisions of this chapter, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court shall not require the director to post a bond in an action brought under this chapter.

(2) If the director finds that a person has violated or that there is reasonable cause to believe that a person is about to violate the provisions of section 26-2711, Idaho Code, the director may order the person to cease and desist from the violation unless and until the person is issued a license.

(3) Within thirty (30) days after an order is issued under subsection (2) of this section, the person to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A person to whom an order is directed under subsection (2) of this section may petition for judicial review of the order in conformance with the provisions of chapter 52, title 67, Idaho Code.

(4) If, after notice and the opportunity for a hearing, the director determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate this chapter or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate in an unsafe or unsound act with respect to the business of that licensee, the director may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(5) If the director determines that any of the factors set forth in subsection (4) of this section are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise

seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (4) of this section, the director may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(6) Within thirty (30) days after an order is issued under subsection (5) of this section, the licensee or subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the application is filed or within a longer period to which the licensee or subject person consents, the order shall be considered rescinded. Upon the hearing, the director shall affirm, modify, or rescind the order. A licensee or subject person to whom an order is directed under subsection (5) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(7) If the director finds that a licensee has failed to comply with the provisions of section 26-2717(5), Idaho Code, the director shall revoke the certification of eligible equity investment and shall so notify the licensee promptly.

History.
I.C., § 26-2723, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 9, p. 406.

26-2724. Violation of chapter — Removal of subject person. — (1) The director may issue an order removing a subject person of a licensee from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and the opportunity for a hearing, the director determines all of the following are true:

(a) The subject person has violated the provisions of this chapter or another applicable law; the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

(b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The director may issue an order removing the subject person from his office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the director, if, after notice and the

opportunity for a hearing, the director determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

(a) Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

(b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the director determines that the factors set forth in subsection (1) or (2) of this section are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interest of the licensee or for the protection of the public interest that the director immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the director may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the director.

(4) Within thirty (30) days after an order is issued under subsection (3) of this section, the subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to begin a hearing within fifteen (15) business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A subject person of a licensee to whom an order is issued under subsection (3) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(5) A person to whom an order is directed under this section may apply to the director to modify or rescind the order. The director shall not modify or rescind the order unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this chapter.

(6) As used in this section, "office," if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

History.
I.C., § 26-2724, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 10, p. 406.

26-2725. Indictment or conviction of a crime — Removal of subject person. — (1) If the director determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the director may issue an order suspending the

subject person from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the director.

(2) If the director determines that a subject person or former subject person of a licensee to whom an order was directed under subsection (1) of this section, or another subject person of a licensee, has been convicted of, entered a plea of guilty to, has been found guilty of a crime which is punishable by imprisonment for a term of not less than one (1) year and which involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the director may issue an order suspending or removing the subject person or former subject person from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the director.

(3) Within thirty (30) days after an order is issued under subsection (1) or (2) of this section, the subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A subject person or former subject person of a licensee to whom an order is directed under subsection (1) or (2) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(4) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the director from issuing an order concerning the subject person under any other provision of this chapter.

(5) A person to whom an order is directed under this section may apply to the director to modify or rescind the order. The director shall not modify or rescind the order unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this chapter.

(6) As used in this section, "office," if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

History.
I.C., § 26-2725, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 11, p. 406.

26-2727. Order to refrain from offering financial assistance — Conditions — Hearing. — (1) The director may issue an order directing a licensee to refrain from providing any additional financing assistance and management assistance to business firms if, in the opinion of the director, the order is necessary to protect the interest of the licensee or the public

interest, and if, after notice and a hearing, the director determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated the provisions of this chapter or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development corporation.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the director determines that any of the factors set forth in subsection (1) of this section are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or the public interest that the director immediately issue an order directing the licensee to refrain from providing any additional financing assistance and management assistance to business firms, the director may issue such an order without a hearing. Within thirty (30) days after an order is issued under this subsection, the licensee to whom the order is directed may file with the director a request for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order.

(3) With the consent of the director, a licensee which has been the subject of an order under subsection (1) or (2) of this section may resume providing financing assistance and management assistance to business firms under such conditions as the director may prescribe.

(4) A person to whom an order is directed under subsection (1) or (2) of this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when the order is modified or rescinded, will comply with this chapter.

History.
I.C., § 26-2727, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 12, p. 406.

Compiler's Notes. Sections 11 and 13 of S.L. 2002, ch. 145 are compiled as §§ 26-2725 and 26-2729, respectively.

26-2729. Violation of chapter — Civil penalties. — (1) If, after notice and the opportunity for a hearing, the director finds that a person has violated the provisions of this chapter, he may order that person to pay to the director a civil penalty in the amount the director specifies. However, the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each violation, or in the case of a continuing violation, one thousand dollars ($1,000) for each day during which the violation continues. Money collected for a civil penalty under this section shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

(2) The provisions of this section do not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the director, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) The provisions of subsection (1) of this section are additional to, and not alternative to, other provisions of this chapter which authorize the director to issue orders or to take other action on account of a violation of the provisions of this chapter.

History.
I.C., § 26-2729, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 13, p. 406.

26-2731. Construction — Promulgation of rules — Applicability of chapter. — This chapter shall be liberally construed to accomplish its purposes.

A proceeding to promulgate rules or a proceeding regarding civil penalties under section 26-2729, Idaho Code, shall be subject to the administrative procedure act contained in chapter 52, title 67, Idaho Code.

Except as otherwise provided in this section, the provisions of a licensee's incorporating statute apply to the licensee. If a provision of the licensee's incorporating statute conflicts with any provision of this chapter, this chapter controls.

History.
I.C., § 26-2731, as added by 1989, ch. 252, § 1, p. 601; am. 2002, ch. 145, § 14, p. 406.

CHAPTER 28

MORTGAGE COMPANIES

SECTION.
26-2802. Definitions.

26-2802. Definitions. — As used in this chapter:

(1) "Department" means the department of finance of the state of Idaho.

(2) "Director" means the director of the department of finance.

(3) "Mortgage company" means any person who, directly or indirectly is engaged in one (1) of the following:

(a) Makes or offers to make residential mortgage loans.

(b) Services or offers to service residential mortgage loans.

(c) Buys or sells, or offers to buy or sell, residential mortgage loans.

(4) "Person" means an individual, sole proprietorship, partnership, corporation or other association of individuals, however organized.

(5) "Residential mortgage loan" means a loan made primarily for personal, family or household use and is primarily secured by a security interest on residential real property located in this state.

History.

I.C., § 26-2802, as added by 1990, ch. 225, § 1, p. 600; am. 2007, ch. 126, § 7, p. 376.

Compiler's Notes. The 2007 amendment, by ch. 126, in the introductory paragraph in subsection (3), deleted "with respect to real property located in this state" from the end; in subsections (3)(a) and (3)(b), substituted "residential mortgage loans" for "loans secured by liens on real property"; rewrote subsection (3)(c), which formerly read: "Buys or sells promissory notes secured by liens on real property or offers to buy or sell promissory notes secured by liens on real property"; and added subsection (5).

CHAPTER 29

MONEY TRANSMISSION

SECTION.
26-2914. Authority to conduct examinations and investigations.
26-2915. Maintenance of records.
26-2916. Confidentiality of data submitted to the director.
26-2917. Suspension or revocation of licenses.

26-2914. Authority to conduct examinations and investigations. — (1) For the purpose of discovering violations of this chapter or rules adopted under this chapter, discovering unsafe and unsound practices, or securing information lawfully required under this chapter, the director may at any time, either personally or by designee, investigate or examine the business and wherever located, the books, accounts, records, papers, documents, files and other information used in the business of every applicant, licensee or its authorized representatives, and of every person who is engaged in the business of providing money transmission services, whether the person acts or claims to act under or without the authority of this chapter. For these purposes, the director or designated representative shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons. The director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files and other information; may require that such

original books, accounts, papers, documents, records, files and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files or other information. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files or other information. Should the director conclude that an on-site examination of a licensee is necessary, the licensee, subject to the provisions of subsection (2) of this section, shall pay all the actual costs of such examination. If the director determines, based on the licensee's financial statements and past history of operations in the state, that an on-site examination is unnecessary, the on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the director.

(2) In the case of refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or his designee to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt of court. When the director examines a licensee or an authorized representative within this state, the licensee or authorized representative shall pay all the actual costs of such examination, up to a maximum of one thousand dollars ($1,000).

History.
I.C., § 26-2914, as added by 1994, ch. 410, § 1, p. 1282; am. 2005, ch. 142, § 1, p. 438.

26-2915. Maintenance of records. — (1) Each licensee shall make, keep, and preserve the following books, accounts and other records for a period of three (3) years:

(a) A record or records of payment instruments sold;

(b) A general ledger containing all asset, liability, capital, income and expense accounts, which general ledger shall be posted at least monthly;

(c) Settlement sheets, if received from authorized representatives;

(d) Bank statements and bank reconciliation records;

(e) Records of outstanding payment instruments;

(f) Records of each payment instrument paid within the three (3) year period;

(g) A list of the names and addresses of all of the licensee's authorized representatives, as well as copies of each authorized representative's contract; and

(h) All reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C.

sec. 5311, 31 CFR part 103 (2000), and other federal and state laws pertaining to money laundering.

(2) Maintenance of such documents as are required in this section in a photographic or other similar form shall constitute compliance with the provisions of this section.

(3) Records may be maintained at a location other than at a location within this state so long as they are made accessible to the director on seven (7) days' written notice.

History.
I.C., § 26-2915, as added by 1994, ch. 410, § 1, p. 1282; am. 2005, ch. 142, § 2, p. 438.

26-2916. Confidentiality of data submitted to the director. — (1) All information or reports obtained by the director from an applicant, licensee or authorized representative, whether obtained through reports, applications, examinations, audits, investigation, or otherwise including, but not limited to:

(a) All information contained in or related to examination, investigation, operating, or condition reports reported by, on behalf of, or for the use of the director; or

(b) Financial statements, balance sheets, or authorized representative information;

are confidential trade secrets and may not be disclosed or distributed outside the department in accordance with the provisions of chapter 3, title 9, Idaho Code, by the director or any officer or employee of the department.

(2) The director, however, may provide for the release of information to representatives of state or federal agencies who state in writing that they shall maintain the confidentiality of such information or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under the provisions of this chapter or to release aggregated financial data on such licensees.

History.
I.C., § 26-2916, as added by 1994, ch. 410, § 1, p. 1282; am. 1997, ch. 60, § 3, p. 111; am. 2005, ch. 142, § 3, p. 438.

26-2917. Suspension or revocation of licenses. — After notice and opportunity for hearing, the director may suspend or revoke a licensee's license if the director finds that:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying such application;

(2) The licensee's net worth becomes inadequate and the licensee, after ten (10) days' written notice from the director, fails to take such steps as the director deems necessary to remedy such deficiency;

(3) The licensee violates any provisions of this chapter or any rule or order of the director under the provisions of this chapter or is convicted of a violation of a state or federal money laundering or terrorism law;

(4) The licensee is conducting its business in an unsafe or unsound manner;

(5) The licensee is insolvent;

(6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(7) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

(8) The licensee refuses to permit the director to make any examination authorized in this chapter;

(9) The licensee willfully fails to make any report required in this chapter; or

(10) The licensee, any person who exercises any managerial authority over the licensee's activities, or any of its executive officers or other persons in control of the licensee are listed or become listed on the "specially designated nationals and blocked persons" list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

History.
I.C., § 26-2917, as added by 1994, ch. 410, § 1, p. 1282; am. 2005, ch. 142, § 4, p. 438.

CHAPTER 31

IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

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26-31-321. Severability.

Part 1. General Provisions

26-31-101. Short title and scope. — This chapter shall be known and may be cited as the "Idaho Residential Mortgage Practices Act," and is organized into three (3) parts. Part 1 includes provisions that apply to the entire chapter. Part 2 includes provisions for the regulation of mortgage brokers and mortgage lenders. Part 3 includes provisions for the regulation of individual mortgage loan originators.

History.

I.C., § 26-31-101, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Former chapter 31 of Title 26, which comprised the following sections, was repealed by S.L. 2009, ch. 97, § 1.

26-3101. Short title. [I.C., § 26-3101, as added by 1996, ch. 324, § 1, p. 1100; am. 2004, ch. 377, § 1, p. 1121.]

26-3102. Definitions. [I.C., § 26-3102, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 1, p. 1167; am. 2003, ch. 73, § 1, p. 238; am. 2004, ch. 99, § 1, p. 355; am. 2004, ch. 377, § 2, p. 1121; am. 2005, ch. 262, § 1, p. 806; am. 2008, ch. 313, § 1, p. 864.]

26-3103. Exemptions. [I.C., § 26-3103, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 2, p. 1167; am. 2003, ch. 221, § 1, p. 573; am. 2004, ch. 314, § 1, p. 884; am. 2004, ch. 377, § 3, p. 1121; am. 2005, ch. 261, § 1, p. 805.]

26-3104. Unlawful acts. [I.C., § 26-3104, as added by 1996, ch. 324, § 1, p. 1100; am. 2004, ch. 377, § 4, p. 1121; am. 2006, ch. 123, § 1, p. 356.]

26-3105. Powers and duties of director. [I.C., § 26-3105, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 3, p. 1167; am. 2004, ch. 377, § 5, p. 1121; am. 2006, ch. 410, § 1, p. 1240; am. 2008, ch. 313, § 2, p. 865.]

26-3106. Remedies available to the department. [I.C., § 26-3106, as added by 1996, ch. 324, § 1, p. 1100; am. 2003, ch. 73, § 2, p. 238.

26-3107. Borrowers' remedies not affected. [I.C., § 26-3107, as added by 1996, ch. 324, § 1, p. 1100.]

26-3108. License to do business as a mortgage broker or mortgage lender. [I.C., § 26-3108, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 4, p. 1167; am. 2003, ch. 73, § 3, p. 238; am. 2004, ch. 377, § 6, p. 1121; am. 2008, ch. 313, § 3, p. 866.]

26-3108A. License to do business as a loan originator. I.C., § 26-3108A, as added by 2004, ch. 377, § 7, p. 1121; am. 2008, ch. 313, § 4, p. 869.]

26-3109. Revocation or suspension of license. [I.C., § 26-3109, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 5, p. 1167; am. 2003, ch. 73, § 4, p. 238; am. 2004, ch. 377, § 8, p. 1121.]

26-3110. Surety bonds and continuing education. [I.C., § 26-3110, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 6, p. 1167; am. 2003, ch. 73, § 5, p. 238; am. 2004, ch. 377, § 9, p. 1121; am. 2008, ch. 313, § 5, p. 870.]

26-3111. Records — Annual reports — Renewal of license. [I.C., § 26-3111, as added by 1996, ch. 324, § 1, p. 1100; am. 2003, ch. 73, § 6, p. 238; am. 2004, ch. 377, § 10, p. 1121; am. 2008, ch. 313, § 6, p. 872.]

26-3112. Examination and investigations. [I.C., § 26-3112, as added by 1996, ch. 324, § 1, p. 1100; am. 2004, ch. 377, § 11, p. 1121.]

26-3113. Restrictions on fees and charges. [I.C., § 26-3113, as added by 1996, ch. 324, § 1, p. 1100.]

26-3114. Prohibited practices of mortgage brokers and mortgage lenders. I.C., § 26-3114, as added by 1996, ch. 324, § 1, p. 1100; am. 2003, ch. 73, § 7, p. 238; am. 2004, ch. 377, § 12, p. 1121.]

26-3114A. Prohibited practices of loan originators. [I.C., § 26-3114A, as added by 2004, ch. 377, § 13, p. 1121.]

26-3115. Severability. [I.C., § 26-3115, as added by 1996, ch. 324, § 1, p. 1100.]

Former § 26-3116, Initial licensing and compliance, which comprised I.C., § 26-3116, as added by 1996, ch. 324, § 1, p. 1100; am. 2003, ch. 73, § 8, p. 238; am. 2004, ch. 377, § 14, p. 1121, was repealed by S.L. 2008, ch. 313, § 7.

Former § 26-3116A, Initial loan originator licensing, which comprised I.C., § 26-3116A, as added by 2004, ch. 377, § 15, p. 1121, was repealed by S.L. 2008, ch. 313, § 7.

26-3117. Relationship to other laws. [I.C., § 26-3117, as added by 2003, ch. 73, § 9, p. 238.]

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-102. General definitions. — As used in this chapter and in rules promulgated pursuant to this chapter:

(1) "Borrower" means the person who has applied for a residential mortgage loan from a licensee, or person required to be licensed, under this chapter, or on whose behalf the activities set forth in section 26-31-201(3), (5) or (7), or section 26-31-303(7), Idaho Code, are conducted.

(2) "Control person" means a person who:

(a) Is a person who has the power, directly or indirectly, to direct the management or policies of a company, including a managing member, general partner, director, executive officer or other person occupying a similar position or performing similar functions, or in the case of a limited liability company, is a managing member;

(b) Directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security of a mortgage broker or mortgage lender;

(c) Is a qualified person in charge as defined in section 26-31-201, Idaho Code; or

(d) Is an individual identified as a manager of a location for which an applicant is applying for a license under part 2 of this chapter.

(3) "Deficiency" means information contained in, or omitted from, an application for a mortgage broker, mortgage lender or mortgage loan originator license that causes the application to be inaccurate, incomplete or otherwise not in conformance with the provisions of this chapter, any rule promulgated or order issued under this chapter, application instructions published by the director or the provisions of the NMLSR policy guidebook.

(4) "Department" means the department of finance of the state of Idaho.

(5) "Director" means the director of the department of finance.

(6) "Financial services" means any activity pertaining to securities, commodities, banking, insurance, consumer lending, money services businesses, consumer debt management or real estate including, but not limited to, acting as or being associated with a bank or savings association, credit union, farm credit system institution, mortgage lender, mortgage broker, real estate salesperson or agent, appraiser, closing agent, title company, escrow agent, payday lender, money transmitter, check casher, pawnbroker, collection agent, debt management company, title lender or credit repair organization.

(7) "Housing finance agency" means any entity that is:

(a) Chartered by a state to help meet the affordable housing needs of the residents of the state;

(b) Supervised directly or indirectly by the state government; and

(c) Subject to audit and review by the state in which it operates.

(8) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this chapter.

(9) "Nationwide mortgage licensing system and registry" or "NMLSR" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage brokers, mortgage lenders and mortgage loan originators.

(10) "NMLSR policy guidebook" means the conference of state bank supervisor's and the American association of residential mortgage regulator's NMLSR policy guidebook for licensees, published by the NMLSR, as identified by administrative rule.

(11) "Person" means a natural person, corporation, company, limited liability company, partnership or association.

(12) "Real estate settlement procedures act" means the act set forth in 12 U.S.C. section 2601 et seq., as identified by administrative rule.

(13) "Regulation X" means regulation X as issued by the federal bureau of consumer protection and codified at 12 CFR 1024 et seq., as identified by administrative rule.

(14) "Regulation Z" means regulation Z as issued by the federal bureau of consumer protection and codified at 12 CFR 1026 et seq., as identified by administrative rule.

(15) "Residential mortgage loan" means any loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, located in Idaho, or on residential real estate.

(16) "Residential real estate" means any real property located in Idaho, upon which is constructed or intended to be constructed a dwelling as defined in section 103(v) of the truth in lending act.

(17) "Truth in lending act" means the act set forth in 15 U.S.C. section 1601 et seq., as identified by administrative rule.

(18) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

History.

I.C., § 26-31-102, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 1, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted subsections (2), (3), (6), (7) and (10), redesignating the subsequent subsections accordingly; in subsections (13) and (14) substituted "issued by the federal bureau of consumer protection" for "promulgated by the U.S. department of housing and urban development"; and updated a subsection reference in subsection (1) and CFR references in subsections (13) and (14).

Section 103(v) of the truth in lending act, referred to in subsections (15) and (16), is codified as 15 USCS § 1602(v).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

For more on the conference of state bank supervisors, see *http://www.csbs.org/Pages/default.aspx*.

For more on the American association of residential mortgage regulators, see *http://www.aarmr.org/*.

For more on the NMLSR policy guidebook, see *http://mortgage.nationwidelicensingsystem.org/licensees/resources/Licensee Resources/NMLS%20Guidebook%20for%20Licensees.pdf*.

For more on the federal bureau of consumer protection, see *http://www.ftc.gov/bcp/index.shtml*

Cross Reference. Department of finance, § 67-2701 et seq.

A.L.R. Validity, construction, and application of Truth in Lending Act (TILA) and regulations promulgated thereunder —

United States supreme court cases. 67 A.L.R. Fed. 2d 567.

26-31-103. Director's authority under the nationwide mortgage licensing system and registry. — (1) The legislature has determined that a nationwide mortgage licensing system and registry for mortgage brokers, mortgage lenders and mortgage loan originators is consistent with both the public interest and the purposes of this chapter.

(2) For the sole purpose of participating in the nationwide mortgage licensing system and registry, the director is authorized to:

(a) Modify by rule the license renewal dates under this chapter;

(b) Establish by rule such new requirements as are necessary for the state of Idaho to participate in the nationwide mortgage licensing system and registry upon the director's finding that each new requirement is consistent with both the public interest and the purposes of this chapter; and

(c) Require a background investigation of each applicant and each control person of an applicant for a mortgage broker, mortgage lender or mortgage loan originator license by means of fingerprint checks by the Idaho state police and the FBI for state and national criminal history record checks. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this chapter. The fee required to perform the criminal history record check shall be borne by the license applicant. Information obtained or held by the director pursuant to this subsection shall be considered confidential personal information and shall be exempt from disclosure pursuant to section 9-340C(8) and (9), Idaho Code.

History.
I.C., § 26-31-103, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 2, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted "and each control person of an applicant" near the beginning of paragraph (2)(c).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-104. Borrower's remedies not affected. — The grant of powers to the director in this chapter does not limit remedies available to borrowers under this chapter or under other principles of law or equity.

History.
I.C., § 26-31-104, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-105. Relationship to other laws. — (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions, regulations and rules pertaining to the financial or lending activities of persons who:

(a) Are subject to the jurisdiction of the department, including those whose activities are subject to this chapter;

(b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union admin-

istration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or

(c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (a) or (b) of this subsection or who assist or facilitate such transactions.

(2) The requirements of this section shall apply to all ordinances, resolutions and rules pertaining to financial or lending activities, including any ordinances, resolutions or rules disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

(3) In the event that the United States department of housing and urban development pursuant to the authority granted to it under section 1508, P.L. 110-289, determines that a provision of this chapter does not meet the requirements of section 1508, P.L. 110-289, the director may, in his discretion, for the sole purpose of complying with the determination, refrain from enforcing the provision found by the department of housing and urban development to not meet the requirements of section 1508, P.L. 110-289, until the adjournment of the session of the legislature next following the determination by the department of housing and urban development.

History.
I.C., § 26-31-105, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 1508 of P.L. 110-289, referred to in subsection (3), is codified as 12 USCS § 5107.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-106. Funds collected under this chapter. — Except as provided in section 26-31-110 of this chapter pertaining to the mortgage recovery fund, the director shall deposit all funds collected by the department under this chapter into the finance administrative account pursuant to section 67-2702, Idaho Code.

History.
I.C., § 26-31-106, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-107. Charges for participation in the NMLSR. — Mortgage brokers, mortgage lenders and mortgage loan originators who seek to obtain or retain a license under this chapter shall pay the charges imposed and retained by the NMLSR to fund the expenses associated with an applicant's or licensee's participation in the NMLSR.

History.
I.C., § 26-31-107, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-108. Report to nationwide mortgage licensing system and

registry. — The director shall regularly report to the NMLSR violations of this chapter, as well as enforcement actions and other relevant information, subject to the provisions of section 26-31-315, Idaho Code.

History.
I.C., § 26-31-108, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-109. Mortgage recovery fund. — (1) There is hereby created in the state treasury the mortgage recovery fund.

(2) As provided in section 26-31-112, Idaho Code, the mortgage recovery fund shall be used to reimburse persons to whom an Idaho court awards actual damages resulting from acts constituting violations of this chapter by a mortgage broker, mortgage lender or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(3) A recovery from the mortgage recovery fund shall not include punitive damages awarded by a court.

(4) Payments from the mortgage recovery fund may not be made to:

(a) Any lender whose acts, or the acts of its agent, were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(b) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(c) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

History.
I.C., § 26-31-109, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-110. Funding. — (1) Upon application for a mortgage broker, mortgage lender or mortgage loan originator license, and upon renewal of such licenses issued under this chapter, the applicant or person seeking renewal shall, in addition to paying the license application or renewal fee required under this chapter, pay a fee to the department through the NMLSR for deposit in the mortgage recovery fund as follows:

(a) Two hundred fifty dollars ($250) for home office locations of mortgage brokers and mortgage lenders licensed under part 2 of this chapter;

(b) One hundred fifty dollars ($150) for each branch office location of a mortgage broker or mortgage lender licensed under part 2 of this chapter; and

(c) One hundred dollars ($100) for each mortgage loan originator licensed under part 3 of this chapter.

(2) With respect to mortgage recovery fund fees payable at the time of annual license renewal for licensees under this chapter, the director may adjust the fees within the limits of subsection (1) of this section on a pro rata basis as necessary to maintain a balance of one million five hundred

thousand dollars ($1,500,000) in the mortgage recovery fund, plus an additional amount of fifty thousand dollars ($50,000) as set forth in subsection (4) of this section.

(3) All interest that accrues in the mortgage recovery fund shall be added to the balance of the mortgage recovery fund.

(4) On an annual basis, the department may apply up to fifty thousand dollars ($50,000) of moneys accumulated in the mortgage recovery fund in excess of one million five hundred thousand dollars ($1,500,000) to:

(a) Fund the department's expenses in administering the mortgage recovery fund;

(b) Develop and implement consumer education concerning the residential mortgage industry;

(c) Contract for research projects for the state concerning the residential mortgage industry;

(d) Fund the training expenses of department staff members and its attorneys concerning the residential mortgage industry; and

(e) Publish and distribute educational materials to licensees and applicants for licensure under this chapter.

History.
I.C., § 26-31-110, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-111. Statute of limitations. — The filing of a verified claim with the court pursuant to section 26-31-112, Idaho Code, that is the basis of a claim against the mortgage recovery fund may not be instituted more than one (1) year after termination of all court proceedings concerning such judgment, including appeals.

History.
I.C., § 26-31-111, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-112. Procedure for recovery. — (1) A person who obtains against a mortgage broker, mortgage lender or mortgage loan originator a money judgment in an Idaho court that includes findings of violations of this chapter occurring on or after July 1, 2009, after final judgment has been entered, execution returned unsatisfied and the judgment has been recorded, may file a verified claim with the court in which the judgment was entered, and on twenty (20) days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment, subject to section 26-31-111, Idaho Code.

(2) At a hearing on the application, the person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under section 26-31-109(2), Idaho Code;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker, mortgage lender or

mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this state or any other state to satisfy the judgment.

(3) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund shall be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(4) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (2) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all of the requirements of this section.

(5) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(6) If the court finds that the aggregate amount of claims against a mortgage broker, mortgage lender or mortgage loan originator exceeds the limits set forth in section 26-31-113, Idaho Code, the court shall reduce proportionately the amount the court finds payable on the claim.

(7) The department shall provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

History.
I.C., § 26-31-112, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-113. Recovery limits. — (1) A person entitled to receive payment from the mortgage recovery fund may receive reimbursement of actual damages, which shall not include post judgment interest, reasonable attorney's fees and court costs as determined by the court, subject to the limitations in subsection (2) of this section and subject to the availability of sufficient funds in the mortgage recovery fund at the time payment is ordered.

(2) A payment from the mortgage recovery fund may be made by the director only pursuant to a court order as provided by section 26-31-112, Idaho Code, in an amount equal to the unsatisfied portion of the creditor's judgment or judgments or fifty thousand dollars ($50,000), whichever is less.

(3) Payments from the mortgage recovery fund shall be limited in the aggregate to two hundred fifty thousand dollars ($250,000) against any one

(1) licensee. If the total claims against such licensee exceed the aggregate limit of two hundred fifty thousand dollars ($250,000), the court shall prorate payment based on the ratio that a person's claim bears to the other claims filed against such licensee.

History.
I.C., § 26-31-113, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-114. Revocation of license for payment from mortgage recovery fund. — (1) The director may summarily revoke a license issued under this chapter if the director is required by court order under section 26-31-112, Idaho Code, to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(2) A person whose license has been revoked under subsection (1) of this section is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(3) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

History.
I.C., § 26-31-114, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Part 2. Provisions Applicable to Mortgage Brokers and Mortgage Lenders

26-31-201. Definitions. — As used in this part and in rules promulgated pursuant to this chapter and pertinent to this part:

(1) "Agent" means a person who acts with the consent and on behalf of a licensee and is subject to the licensee's direct or indirect control, and may include an independent contractor.

(2) "Loan modification" means an adjustment or compromise of an existing residential mortgage loan. The term "loan modification" does not include a refinancing transaction.

(3) "Loan modification activities" means for compensation or gain, or in the expectation of compensation or gain, engaging in or offering to engage in effecting loan modifications in this state. The definition of "debt counselor" or "credit counselor" in section 26-2222(9), Idaho Code, shall not apply to loan modification activities.

(4) "Mortgage broker" means any nonexempt organization that performs the activities described in subsection (5) of this section, with respect to a residential mortgage loan.

(5) "Mortgage brokering activities" means for compensation or gain, or in

the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans or engaging in loan modification activities on behalf of a borrower.

(6) "Mortgage lender" means any nonexempt organization that makes residential mortgage loans to borrowers and performs the activities described in subsection (7) of this section.

(7) "Mortgage lending activities" means for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept applications for residential mortgage loans, or assisting or offering to assist in the preparation of an application for a residential mortgage loan.

(8) "Organization" means a person that is not a natural person.

(9) "Qualified person in charge" means the person designated, pursuant to section 26-31-206, Idaho Code, as being in charge of, and primarily responsible for, the operation of a licensed location of a mortgage broker or mortgage lender licensed under this part.

History.
I.C., § 26-31-201, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 3, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted "and primarily responsible for, the operation of" in subsection (9) and made stylistic changes.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-202. Exemptions. — The provisions of this part do not apply to:

(1) Agencies of the United States and agencies of this state and its political subdivisions;

(2) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(3) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs;

(4) Regulated lenders licensed under the Idaho credit code and regularly engaged in making regulated consumer loans other than those secured by a security interest in real property;

(5) Trust companies as defined in section 26-3203, Idaho Code;

(6) Any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union or industrial loan company. The terms "bank," "savings and loan association," "credit union" and "industrial loan company" shall include employees and agents of such organizations as well as wholly owned subsidiaries of such organizations, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;

(7) Attorneys duly authorized to practice in this state, to the extent that they are retained by their clients to engage in activities authorized by this part and such activities are ancillary to the attorney's representation of the client;

(8) Accountants with an active license under chapter 2, title 54, Idaho Code, provided that they are retained by their clients to engage in activities authorized by this part and such activities are ancillary to the representation of the client;

(9) Persons employed by, or who contract with, a licensee under this part to perform only clerical or administrative functions on behalf of such licensee, and who do not solicit borrowers or negotiate the terms of loans on behalf of the licensee;

(10) Any person not making more than five (5) loans primarily for personal, family or household use and primarily secured by a security interest on residential real property, with his own funds for his own investment, in any period of twelve (12) consecutive months; nor

(11) Any person who funds a residential mortgage loan which has been originated and processed by a licensee under this part or by an exempt person under this part, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee under this part or an exempt person under this part.

History.
I.C., § 26-31-202, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 4, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, substituted present subsections (7) and (8) for former subsection (7), which read: "Attorneys, or persons" and substituted current subsection (8) for "licensed under chapter 2, title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status" and redesignated the subsequent subsections accordingly.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-203. Unlawful acts. — (1) Any person, except a person exempt under section 26-31-202, Idaho Code, who engages in mortgage brokering activities or mortgage lending activities without first obtaining a license from the department in accordance with this part, shall upon conviction be guilty of a felony.

(2) No person, except a person exempt under section 26-31-202, Idaho Code, shall engage in mortgage brokering activities or mortgage lending activities without first obtaining a license from the department in accordance with this part.

History.
I.C., § 26-31-203, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-204. Powers and duties of director. — In addition to any other duties imposed upon the director by law, the director shall:

(1) Administer and enforce the provisions and requirements of this part;

(2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this part or rules promulgated pursuant to this chapter and pertinent to this part;

(3) Conduct examinations of the books and records of mortgage broker and mortgage lender licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this part and the rules promulgated pursuant to this chapter and pertinent to this part;

(4) Appoint a volunteer advisory board of up to five (5) individual mortgage industry participants who are licensed or registered through the NMLSR, no less than two (2) of whom represent licensed mortgage brokers and no less than two (2) of whom represent licensed mortgage lenders;

(5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this part;

(6) Be authorized to set, by annual written notification to mortgage broker and mortgage lender licensees, limits on the fees and charges which are set forth in subsections (1) and (2) of section 26-31-210, Idaho Code; and

(7) Review and approve forms used by mortgage broker and mortgage lender licensees prior to their use as prescribed by the director.

History.

I.C., § 26-31-204, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 5, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, rewrote subsection (4), which formerly read: "Appoint a volunteer advisory board which shall consist of two (2) individuals who represent mortgage lenders and two (2) individuals who represent mortgage brokers."

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-205. Remedies available to the department. — (1) Whenever it appears to the director that any person subject to this part has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z or of this part or any rule promulgated or order issued under this act and pertinent to this part, he may in his discretion bring an action in any court of competent jurisdiction, and upon a showing of any violation, there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part or any rule promulgated or order issued under this chapter and pertinent to this part, and to enforce compliance with this part or any rule promulgated or order issued under this chapter and pertinent to this part;

(b) An order that the person violating any provision of this part, or a rule promulgated or order issued under this chapter and pertinent to this part pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation;

(c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees;

(d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this part;

(e) An order granting other appropriate remedies including restitution to borrowers for excess charges or actual damages.

(2) If the director finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated or order issued under this chapter and pertinent to this part, the director may, in his discretion, order the person to cease and desist from the violations.

History.
I.C., § 26-31-205, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

A.L.R. Validity, construction, and application of Truth in Lending Act (TILA) and regulations promulgated thereunder — United States supreme court cases. 67 A.L.R. Fed. 2d 567.

26-31-206. License to do business as a mortgage broker or mortgage lender. — (1) The director shall receive and act on all applications for licenses to do business as a mortgage broker or mortgage lender. Applications shall be filed through the NMLSR, or as otherwise prescribed by the director, shall contain such information as the director may reasonably require, shall be updated through the NMLSR, or as otherwise prescribed by the director, as necessary to keep the information current, and shall be accompanied by a nonrefundable application fee of three hundred fifty dollars ($350).

(2) An application for license may be denied if the director finds that:

(a) The financial responsibility, character and fitness of the license applicant, or of the officers and directors thereof, if the applicant is a corporation, partners thereof if the applicant is a partnership, members or managers thereof if the applicant is a limited liability company and individuals designated in charge of the applicant's places of business, or other control persons, are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this part;

(b) The qualified person in charge of the applicant's places of business has not been issued a license under part 3 of this chapter or does not have a minimum of three (3) years' experience in residential mortgage brokering or mortgage lending;

(c) The applicant or any control person of the applicant has been convicted of or pled nolo contendere to any felony, or has been convicted of or pled nolo contendere to a misdemeanor involving any aspect of financial services, or a court has accepted a finding of guilt on the part of the applicant or any control person of the applicant of any felony, or of a misdemeanor involving any aspect of financial services, fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion or conspiracy to commit any of these offenses;

(d) The applicant or any control person of the applicant has had a license to conduct financial services issued by a government agency revoked or suspended under the laws enforced by such agency;

(e) The applicant or any control person of the applicant has filed an

application for a license which is false or misleading with respect to any material fact;

(f) The applicant or any partner, officer, director, manager, member, employee, agent or other control person of the applicant has violated this chapter or any rule promulgated or order issued under this chapter and pertinent to this part;

(g) The applicant or any partner, officer, director, manager, member, employee, agent or other control person of the applicant has violated any state or federal law, rule or regulation pertaining to financial services; or

(h) The applicant or any control person of the applicant has not provided information on the application as reasonably required by the director pursuant to subsection (1) of this section, or has provided materially false information.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request to the director, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied;

(b) The director has not issued a license within sixty (60) days after receipt of a complete license application from an applicant. If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application.

(5) A license application shall be deemed withdrawn and void if an applicant submits an incomplete license application and, after receipt of a written notice of the application deficiency, fails to provide the director with information necessary to complete the application within sixty (60) days of receipt of the deficiency notice. A written deficiency notice shall be deemed received by a license applicant when:

(a) Placed in regular U.S. mail by the director or his agent using an address provided by the applicant on the license application; or

(b) E-mailed to the applicant using an e-mail address provided by the applicant on the license application; or

(c) Posted by the director or his agent on the NMLSR.

(6) Every licensee under this part shall maintain a home office located in the United States and licensed under this part as the licensee's principal location for the transaction of mortgage business. The director may, on application through the NMLSR, or as otherwise prescribed by the director, issue additional branch licenses to the same licensee upon compliance with all the provisions of this part governing the issuance of a single license. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage lending activities are directly or indirectly conducted. The qualified person in charge of each place of

business shall continuously satisfy the requirements of subsection (2)(b), (c) and (d) of this section.

(7) No licensee under this part shall change the location of any place of business, consolidate two (2) or more locations or close any home office location without giving the director at least fifteen (15) days' prior written notice. A licensee under this part shall give written notice to the director within three (3) business days of the closure of any branch location licensed under this part. Written notice of the closure of a home or branch office location shall include a detailed explanation of the disposition of all loan applications pending at the time of closure of the licensed location.

(8) No licensee under this part shall engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license.

(9) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which could disqualify that applicant if convicted.

(10) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any civil action or administrative proceeding against an applicant in which the civil action or administrative proceeding involves any aspect of a financial service business and the outcome of which could disqualify the applicant.

(11) A license applicant under this part shall make complete disclosure of all information required in the license application, including information concerning officers, directors, partners, members, managers, employees or agents. A license applicant, or person acting on behalf of the applicant, is not liable in any civil action other than a civil action brought by a governmental agency, related to an alleged untrue statement made pursuant to this part, unless it is shown by clear and convincing evidence that:

(a) The license applicant, or person acting on behalf of the license applicant, knew at the time that the statement was made that it was false in any material respect; or

(b) The license applicant, or person acting on behalf of the applicant, acted in reckless disregard as to the statement's truth or falsity.

(12) Notwithstanding any other provision of this part, an individual licensed under part 3 of this chapter may apply for a license under this section.

History.

I.C., § 26-31-206, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 6, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, rewrote the section to the extent that a detailed comparison is impracticable, adding present subsection (15) and deleting former subsection (11), relating to display of certificate of license.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-207. Revocation or suspension of license. — (1) If the depart-

ment has reason to believe that grounds exist for revocation or suspension of a license issued pursuant to this part, the department may initiate a contested case against a mortgage broker or mortgage lender, and any partner, officer, director, manager, member, control person, employee or agent whose activities constitute the basis for revocation or suspension, in accordance with chapter 52, title 67, Idaho Code. The director may, after proceedings pursuant to chapter 52, title 67, Idaho Code, suspend the license for a period not to exceed six (6) months, or revoke the license, if he finds that:

(a) The licensee or any partner, officer, director, manager, member, control person, employee or agent of the licensee has violated this chapter or any rule promulgated or order issued under this chapter and pertinent to this part; or

(b) The licensee or any partner, officer, director, manager, member, control person, employee or agent of the licensee has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending, or mortgage loan origination activities; or

(c) Facts or conditions exist which would clearly have justified the director in refusing to grant a license had these facts or conditions been known to exist at the time the license was issued; or

(d) The licensee or any partner, officer, director, manager, member, control person, employee or agent of the licensee has been convicted of any felony, or of a misdemeanor involving any aspect of financial services, or a court has accepted a finding of guilt on the part of the licensee or partner, officer, director, manager, member, control person, employee or agent of the licensee, of any felony, or of a misdemeanor involving any aspect of financial services; or

(e) The licensee or any partner, officer, director, manager, member, control person, employee or agent of the licensee has had a license to conduct financial services, including a license substantially equivalent to a license under this act, revoked or suspended by any government agency; or

(f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(g) The mortgage broker or mortgage lender licensee has failed to notify the director of the employment or termination of, or the entering into or termination of a contractual relationship with, a licensed mortgage loan originator pursuant to section 26-31-208(2), Idaho Code; or

(h) The mortgage broker or mortgage lender licensee has failed to supervise diligently and control the mortgage-related activities of a mortgage loan originator as defined in part 3 of this chapter and that is employed by the licensee; or

(i) The mortgage broker or mortgage lender licensee has failed to designate a new qualified person in charge and notify the director of the same through the NMLSR within thirty (30) days following a change in the qualified person in charge; or

(j) The licensee has failed to notify the director of the appointment or employment of a control person within thirty (30) days of such occurrence.

(2) If the director finds that good cause exists for revocation of a license issued under this part, and that enforcement of this chapter and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(3) Any mortgage broker or mortgage lender licensee may relinquish its license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect its liability for acts previously committed, and may not occur after the filing of a complaint for revocation of the license.

(4) The director may, in his discretion, reinstate a license issued under this part, terminate a suspension or grant a new license under this part to a person whose license issued under this part has been revoked or suspended, if no fact or condition then exists which clearly would justify the department in refusing to grant a license.

History.

I.C., § 26-31-207, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 7, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted "control person" throughout the section; rewrote paragraph (1)(e), which formerly read: "The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has had a license substantially equivalent to a license under this act, and issued by another state, denied, revoked or suspended under the laws of such state; or"; and added paragraphs (1)(i) and (1)(j).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-208. Records — Reports — Renewal and reinstatement of license. — (1) Every licensee under this part shall maintain records in the United States, including financial records in conformity with generally accepted accounting principles, in a manner that will enable the director to determine whether the licensee is complying with the provisions of this part. The recordkeeping system of the licensee shall be sufficient if it makes the required information reasonably available to the director. The records need not be kept in the place of business where residential mortgage loans are made, if the director is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than three (3) years after making the final entry relating to the loan.

(2) Every mortgage broker or mortgage lender licensed under this part that employs or contracts with a mortgage loan originator licensed under part 3 of this chapter, for the purpose of conducting mortgage loan origination activities in Idaho, shall:

(a) Notify the director through the NMLSR, or as otherwise prescribed by the director, of the employment of, or contractual relationship with, a mortgage loan originator licensee within thirty (30) days of such employment or contract;

(b) Notify the director through the NMLSR, or as otherwise prescribed by the director, of the termination of employment of, or contractual relationship with, a mortgage loan originator licensee within thirty (30) days of such termination; and

(c) Maintain any records relating to the employment of, or contractual

relationship with, a mortgage loan originator licensee, for a period not to exceed three (3) years.

(3) On or before December 31 of each year, every mortgage broker and mortgage lender licensee under this part shall pay through the NMLSR, or as otherwise prescribed by the director, a nonrefundable annual license renewal fee of one hundred fifty dollars ($150), and file with the director through the NMLSR, or as otherwise prescribed by the director, a renewal application containing such information as the director may require. Notwithstanding the provisions of section 67-5254, Idaho Code, a license issued under this part automatically expires if not timely renewed according to the requirements of this section. Notwithstanding the provisions of section 67-5254, Idaho Code, branch licenses issued under this part also expire upon the expiration, relinquishment or revocation of a license issued under this part to a licensee's designated home office.

(4) The director may reinstate an expired license during the time period of January 1 through February 28, immediately following license expiration if the director finds that the applicant meets the requirements for licensure under this part after submission to the director of:

(a) A complete application for renewal;

(b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and

(c) A reinstatement fee of two hundred dollars ($200).

(5) Within forty-five (45) days of the end of each calendar quarter, each mortgage broker and mortgage lender licensee under this part shall submit quarterly mortgage call reports through the NMLSR, which shall be in such form and shall contain such information as the director may require.

(6) Within forty-five (45) days of the end of each calendar year, each mortgage broker and mortgage lender licensee under this part shall submit an annual report of financial condition through the NMLSR, which shall be in such form and shall contain such information as the director may require.

History.

I.C., § 26-31-208, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 8, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, deleted "Annual" preceding "reports" and inserted "and reinstatement" in the section heading; inserted "in the United States" near the beginning of subsection (1); in subsection (3), inserted "nonrefundable" near the beginning, and substituted "application" for "form" near the end of the first sentence and added the last two sentences; rewrote subsection (4), which formerly read: "On or before March 31 of each year, or other date established by the director by rule, every mortgage broker and mortgage lender licensee under this part shall file with the director a composite annual report containing such information as the director may require for the residential mortgage loans made or brokered by it for the preceding calendar year"; rewrote subsection (5), which formerly read: "Each mortgage broker and mortgage lender licensee under this part shall, as required by the NMLSR, submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require"; and added subsection (6).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-209. Examination and investigations. — (1) The director shall examine periodically at intervals he deems appropriate, the loans and business records of each licensee under this part. In addition, for the purpose of discovering violations of the provisions of this part or securing

information lawfully required pursuant to this part, the director may at any time investigate the loans, business, books and records of any such licensee. For these purposes, the director shall have free and reasonable access to the offices, places of business and books and records of the licensee. The director, for purposes of examination of licensees under this part, shall be paid the actual cost of examination by such licensee within thirty (30) days of the completion of the examination.

(2) If the records of a licensee under this part are located outside of this state, the licensee shall have the option to make such records available to the director at a convenient location within this state, or pay the reasonable and necessary expenses for the director or his representative to examine such records at the place where they are maintained. The director may designate representatives, including comparable officials of the state in which the records are located, to inspect such records on his behalf.

(3) For the purposes of this section, the director may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) If the director has a reasonable basis to believe that an unlicensed person is engaging in activities for which a license is required under this part, then the director may subpoena the person or any employee, member, officer, representative or agent that has possession, custody or care of the books and records of the person to compel their attendance, adduce evidence and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(5) Upon failure to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the district court for an order compelling compliance.

History.

I.C., § 26-31-209, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 9, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted subsection (4) and redesignated former subsection (4) as subsection (5).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-210. Restrictions on fees and charges. — (1) A person subject to this part shall not require a borrower or person seeking a loan modification to pay any fees or charges prior to a residential mortgage loan closing, or prior to the completion of a loan modification, except:

(a) Charges actually incurred by the person subject to this part on behalf

of the borrower or person seeking a loan modification for services which have been rendered by third parties. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, UCC-4 lien searches and appraisals;

(b) An application fee;

(c) A rate-lock fee;

(d) A commitment fee upon approval of the residential mortgage loan;

(e) A cancellation fee which may be charged and collected by a person subject to this part at any time either prior to the scheduled closing of a residential mortgage loan transaction, completion of a loan modification or subsequent thereto.

(2) Any fees charged under the authority of this section must be reasonable and customary as to the type and the amount of the fee charged.

History.
I.C., § 26-31-210, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-211. Prohibited practices of mortgage brokers and mortgage lenders. — No mortgage broker or mortgage lender licensee under this part or person required under this part to have such license shall:

(1) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(2) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(3) Accept any fees at closing which were not previously disclosed fully to the borrower;

(4) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower;

(5) Engage in any misrepresentation or omission of a material fact in connection with a residential mortgage loan;

(6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property which is to be covered by a residential mortgage loan;

(7) Make any false promise likely to influence or persuade, or pursue a course of misrepresentations and false promises through mortgage loan originators or other agents, or through advertising or otherwise;

(8) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material terms of a residential mortgage loan transaction;

(9) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower as required by rule promulgated pursuant to this chapter and pertinent to this part;

(10) Engage in mortgage loan origination activity through any person who at the time of such mortgage loan origination activity does not hold a

mortgage loan originator license issued by the department pursuant to this chapter;

(11) Receive a fee for engaging in loan modification activities except pursuant to a written agreement between the person subject to this part and a person seeking a loan modification. The written agreement must specify the amount of the fee that will be charged to the person seeking a loan modification, specify the terms of the loan for which modification will be sought and disclose the expected impact of the loan modification on the monthly payment and length of the loan; nor

(12) Employ or otherwise appoint as a qualified person in charge any person who the director has found to have violated standards of conduct adopted by the NMLSR applicable to a person taking a written test administered pursuant to section 26-31-308, Idaho Code, or who has obtained or attempted to obtain credit for education required pursuant to section 26-31-307 or 26-31-310, Idaho Code, by means of false pretenses or representations.

History.
I.C., § 26-31-211, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 10, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, added subsection (12).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-212. Continuing education of qualified persons in charge. [Repealed.]

Repealed by S.L. 2013, ch. 64, § 11, effective July 1, 2013.

History.
I.C., § 26-31-212, as added by 2009, ch. 97, § 2, p. 285.

Part 3. Provisions Applicable to Mortgage Loan Originators

26-31-301. Title. — This part 3 of the chapter may be cited as the "Idaho Secure and Fair Enforcement for Mortgage Licensing Act" or the "Idaho S.A.F.E. Mortgage Licensing Act."

History.
I.C., § 26-31-301, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 12, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, twice deleted "of 2009" following "Act."

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-302. Purpose of this part. — (1) The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Idaho consumers, Idaho's economy, the neighborhoods and communities of Idaho, and the housing and real estate industry. The legislature finds that accessibility to

mortgage credit is vital to the state's citizens. The legislature also finds that it is essential for the protection of the citizens of Idaho and the stability of Idaho's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage loan origination process. The purpose of this part is to protect consumers seeking mortgage loans and to ensure that the mortgage industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the legislature establishes within this part an effective system of supervision of mortgage loan originators and enforcement authority, including:

(a) The authority of the director to issue licenses to conduct business under this part, and the authority to promulgate rules and adopt procedures necessary to the licensing of persons covered under this part;

(b) The authority of the director to deny, suspend, condition or revoke licenses issued under this part;

(c) The authority of the director to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this part, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties, and order the removal and ban of individuals from office or employment.

(2) The director shall have broad administrative authority to administer, interpret and enforce this part, and to promulgate rules and issue orders implementing this part, to carry out the intention of the legislature under this part.

History.
I.C., § 26-31-302, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-303. Definitions. — For purposes of this part, the following definitions shall apply:

(1) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act, and includes any credit union.

(2) "Expungement" means, with respect to a record of criminal conviction entered in this state, that no one, including law enforcement, can be permitted access to the record even by court order. With respect to criminal convictions entered in another state, that state's definition of expungement shall apply.

(3) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation.

(4) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(5) "Individual" means a natural person.

(6) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under this chapter.

(a) For the purposes of this subsection clerical or support duties may include, subsequent to the receipt of an application:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(7) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.

(a) Mortgage loan originator does not mean the following:

(i) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 26-31-304(3), Idaho Code;

(ii) A person or entity that only performs real estate brokerage activity and is licensed or registered in accordance with Idaho law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator;

(iii) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. section 101(53D); and

(iv) An individual who is an employee of a federal, state or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state or local government agency or housing finance agency.

(b) For the purposes of this section, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property,

other than in connection with providing financing with respect to any such transaction;

(iv) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under law; and

(v) Offering to engage in any activity, or act in any capacity, described in subparagraphs (i) through (iv) of this paragraph.

(8) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(9) "Registered mortgage loan originator" means any individual who is registered with, and maintains a unique identifier through the NMLSR, who meets the definition of mortgage loan originator and who is an employee of one (1) of the following:

(a) A depository institution;

(b) A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(c) An institution regulated by the farm credit administration.

History.

I.C., § 26-31-303, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 13, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted subsection (2) and redesignated the subsequent subsections accordingly; updated a subsection reference in (7) in light of the 2013 amendment of § 26-31-304; and rewrote paragraph (7)(a)(iv), which formerly read: "A person that only performs the activities of a manufactured housing resale broker, responsible managing employee, retailer or salesman as defined in and licensed under chapter 21, title 44, Idaho Code, unless the person is compensated by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator. This subparagraph shall not apply if the United States department of housing and urban development finds, through guideline, rule, regulation or interpretive letter, that it is inconsistent with the requirements of P.L. 110-289, title V."

Section 3 of the federal deposit insurance act, referred to in subsection (1), is codified as 12 USCS § 1813.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-304. License and registration required — Exemptions. — (1) Unless specifically exempt under subsection (2) of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this part. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the NMLSR.

(2) The following are exempt from this part:

(a) Registered mortgage loan originators when acting on behalf of an entity described in section 26-31-303(9)(a) through (c), Idaho Code;

(b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(c) Any individual who offers or negotiates terms of a residential mortgage loan that is secured by a dwelling that serves as the individual's residence; and

(d) An attorney duly authorized to practice in this state who negotiates the terms of a residential mortgage loan on behalf of a client as an

ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

(3) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(4) For the purpose of implementing an orderly and efficient application and licensing process the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director may establish expedited review and licensing procedures.

History.
I.C., § 26-31-304, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 14, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, deleted former subsection (2) which contained effective dates for the implementation of subsection (1) of this section and accordingly redesignated the subsequent subsections; and, in paragraph (2)(d) substituted "An attorney duly authorized to practice in this state" for "A licensed attorney."

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-305. License and registration application. — (1) Applicants for a license under this part shall apply through the NMLSR in a form prescribed by the director. Each form shall include such content as the director may reasonably require, shall be updated as necessary to keep the information current and shall be accompanied by a nonrefundable application fee of two hundred dollars ($200).

(2) In order to fulfill the purposes of this part, the director may establish relationships or enter into contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and to process fees.

(3) Applicants for licensure under this part shall submit the following to the NMLSR:

(a) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the NMLSR, including the authorization for the NMLSR and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the fair credit reporting act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(4) For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for

purposes of subsection (3)(a) and (b)(ii) of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(5) For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of subsection (3)(b)(i) and (ii) of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(6) Upon written request, an applicant for a license under this part is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied and the request for a hearing is made not more than fifteen (15) days after the director mailed the written notification of denial; or

(b) The director has not issued the applicant a license within sixty (60) days after a complete application for the license was filed.

If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. The director shall state, in substance, his findings that support a denial of an application.

(7) A license application shall be deemed withdrawn and void if an applicant submits an incomplete license application and, after receipt of a written notice of the application deficiency, fails to provide the director with information necessary to complete the application within sixty (60) days of receipt of the deficiency notice. A written deficiency notice shall be deemed received by a license applicant when:

(a) Placed in regular U.S. mail by the director or his agent using an address provided by the applicant on the license application; or

(b) E-mailed to the applicant using an e-mail address provided by the applicant on the license application; or

(c) Posted by the director or his agent on the NMLSR.

(8) The director may suspend action upon an application for a license pursuant to this part pending the resolution of any criminal charge before a court of competent jurisdiction against the applicant which could disqualify the applicant from licensure if the applicant is found guilty of or pleads guilty to the pending charge.

(9) The director may suspend action upon an application for a license pursuant to this part pending resolution of any civil action or administrative proceeding against an applicant that involves any aspect of a financial service business, the outcome of which could disqualify the applicant from licensure.

(10) A license applicant under this part shall make complete disclosure of all information required in the license application. A license applicant or person acting on behalf of the applicant is not liable in any civil action other than a civil action brought by a governmental agency related to an alleged untrue statement made pursuant to this section, unless it is shown that:

(a) The license applicant, or person acting on behalf of the license

applicant, knew at the time that the statement was made that it was materially false; or

(b) The license applicant or person acting on behalf of the license applicant acted in reckless disregard as to the truth or falsity of the statement.

History.

I.C., § 26-31-305, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 15, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, substituted "a complete application" for "the application" in paragraph (6)(b); added subsection (7); and redesignated the subsequent subsections accordingly.

Section 603(p) of the fair credit reporting act, referred to in paragraph (3)(b)(i), is codified as 15 USCS § 1681a(p).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-306. Issuance of license — License not assignable or transferable — Inactive license status. — (1) The director shall not issue a mortgage loan originator license under this part unless the director first makes the following findings:

(a) The applicant has never had a mortgage loan originator license, or other mortgage related license, revoked in any governmental jurisdiction. If such revocation was formally vacated, then it shall not be deemed a revocation for purposes of this section.

(b) The applicant has not been convicted of, found guilty of or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:

(i) During the seven (7) year period immediately preceding the date of the application for licensing or registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(c) Any pardon or expungement of a conviction shall not be deemed a conviction for purposes of this section resulting in an automatic denial or revocation of a mortgage loan originator license. The director may consider the underlying crime, facts or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under paragraph (d) of this subsection.

(d) The applicant has demonstrated financial responsibility, character and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this part. The director shall not base a license application denial under this part solely on a license applicant's credit score or credit report. For purposes of this section, a license applicant is not financially responsible if he has shown a disregard for the management of his personal financial affairs. A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following:

(i) A current outstanding judgment, except a judgment issued solely as a result of medical expenses;

(ii) A current outstanding tax lien or other government lien or filing;

(iii) A foreclosure within the past three (3) years; or

(iv) A pattern of delinquent accounts within the past three (3) years.

(e) The applicant has successfully completed the prelicensing education requirement pursuant to section 26-31-307, Idaho Code.

(f) The applicant has passed a written test that meets the test requirement pursuant to section 26-31-308, Idaho Code.

(g) The applicant has met the mortgage recovery fund requirement pursuant to section 26-31-110, Idaho Code.

(h) The applicant has provided information on the application as required in section 26-31-305, Idaho Code.

(2) The director may conduct investigations as he deems necessary to determine the existence of the requirements listed in this section.

(3) A license issued under this part is not assignable or transferable.

(4) A mortgage loan originator whose license is placed on inactive status under this part shall not act as a mortgage loan originator in this state until the license is activated.

(5) The director shall place a mortgage loan originator license on inactive status upon the occurrence of any of the following:

(a) A mortgage loan originator license application is submitted and approved prior to the filing and approval of a loan originator's relationship and sponsorship by an employing licensed mortgage broker or mortgage lender or by an exempt entity;

(b) Receipt of a notice from either the licensed mortgage broker, mortgage lender, registrant, exempt entity or mortgage loan originator that the mortgage loan originator's sponsored relationship as an employee or independent agent of a licensed mortgage broker, mortgage lender or exempt entity has been terminated; or

(c) The surrender, expiration, suspension or revocation of the employing licensed mortgage broker's, mortgage lender's or exempt entity's license.

(6) If a mortgage loan originator license is designated as inactive under this part, then it shall remain in that status unless and until it is surrendered, revoked, suspended, expired or is activated.

(7) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 26-31-309, Idaho Code. Such renewal shall not activate the license from an inactive status.

(8) The director may activate a mortgage loan originator license upon receipt of a filing through the NMLSR indicating that the mortgage loan originator licensee has been employed and sponsored as a mortgage loan originator by a licensed mortgage broker, mortgage lender or by an exempt entity registrant and if such mortgage loan originator meets the conditions for licensing under this part.

History.

I.C., § 26-31-306, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 16, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, added "License not assignable or transferable — Inactive license status" to the section heading; rewrote, and redesignated as paragraph (1)(c), the former last sentence in paragraph (1)(b), which read: "Any pardon of a conviction shall not be deemed a conviction for purposes of this section" and redesiganted the subsequent paragraphs in subsection (1); and added subsections (3) through (8).

Section 3 of S.L. 2009, ch. 97 provided that

the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-307. Prelicensing and relicensing education of mortgage loan originators. — (1) All individuals seeking a mortgage loan originator license under this part shall satisfy the prelicensing education requirement by completing at least twenty (20) hours of course instruction that has been approved by the NMLSR and administered by a provider approved by the NMLSR. Course instruction shall include:

(a) Three (3) hours minimum of instruction on federal law and regulation;

(b) Three (3) hours minimum of instruction on ethics, which shall include fraud, consumer protection and fair lending issues;

(c) Two (2) hours minimum of instruction on lending standards for the nontraditional mortgage product marketplace; and

(d) Two (2) hours minimum of instruction directly related to this chapter and rules promulgated pursuant to this chapter.

(2) Nothing in this section shall preclude any prelicensing education course approved by the NMLSR that is provided by the applicant's employer, an entity affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(3) The prelicensing education may be completed in a classroom, online or by any other means approved by the NMLSR.

(4) The prelicensing education requirements approved by the NMLSR in subsection (1)(a) through (c) of this section for any state shall be accepted as credit toward completion of prelicensing education requirements in Idaho.

(5) An individual licensed prior to the effective date of this part who is applying to be relicensed shall submit proof that he has completed all of the continuing education requirements for the year in which the license was last held.

History.
I.C., § 26-31-307, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-308. Testing of mortgage loan originators. — (1) All individuals seeking a mortgage loan originator license under this part shall satisfy the written test requirement by passing a qualified written test developed by the NMLSR and administered by a provider approved by the NMLSR based upon reasonable standards and subject to subsection (2) of this section.

(2) A written test shall not be deemed a qualified written test for purposes of subsection (1) of this section unless it tests the applicant's knowledge and comprehension in the following subject areas:

(a) Ethics;

(b) Federal and state law and regulation pertaining to mortgage loan origination;

(c) Federal and state law and regulation pertaining to fraud, consumer

protection, the nontraditional mortgage marketplace and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the NMLSR from administering a written test at the applicant's place of employment, at the location of any subsidiary or affiliate of the applicant's employer or at the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4) In order to pass a qualified written test, an individual must achieve a test score of not less than seventy-five percent (75%) correct answers to questions.

(5) An individual may retake a qualified written test two (2) times with each test occurring at least thirty (30) days after the preceding test. If an individual does not achieve a passing score on a qualified written test upon retake number two (2), then the individual shall wait at least six (6) months before retaking a written test.

(6) A mortgage loan originator who fails to maintain a valid license under this part for a period of five (5) years or longer shall, as a condition of obtaining a new license under this part, retake and pass a qualified written test, not taking into account any time during which such individual is a registered mortgage loan originator.

History.
I.C., § 26-31-308, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 17, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, substituted "two (2)" for "three (3)" twice in subsection (5).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-309. License renewal and reinstatement requirements. — (1) The minimum standards for license renewal for mortgage loan originators licensed under this part shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance pursuant to section 26-31-306, Idaho Code;

(b) The mortgage loan originator has satisfied the annual continuing education requirements pursuant to section 26-31-310, Idaho Code; and

(c) The mortgage loan originator has filed with the director through the NMLSR, on or before December 31 of each year, a renewal application containing such information as the director may require, accompanied by a nonrefundable annual license renewal fee of one hundred dollars ($100).

(2) If a mortgage loan originator fails to timely satisfy the provisions of subsection (1) of this section, notwithstanding the provisions of section 67-5254, Idaho Code, then his license automatically and immediately expires.

(3) The director may reinstate an expired license during the time period of January 1 through February 28, immediately following license expiration if the director finds that the former licensee meets the requirements for licensure under this part after submission to the director of:

(a) A complete application for renewal;

(b) The fees required to apply for license renewal unless previously paid for the period for which the license renewal applies; and

(c) A reinstatement fee of one hundred dollars ($100).

History.

I.C., § 26-31-309, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 18, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted "and reinstatement" into the section heading; substituted "application" for "form" in paragraph (1)(c); substituted "notwithstanding the provisions of section 67-5254, Idaho Code, then his license automatically and immediately expires" for "then his license shall be deemed expired"; rewrote, and redesignated as subsection (3), the former second sentence in subsection (2), which read: "The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR."

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-310. Continuing education for mortgage loan originators. — (1) In order to meet the annual continuing education requirements, a licensed mortgage loan originator shall complete at least eight (8) hours of education each year, which shall include:

(a) Three (3) hours minimum of instruction on federal law and regulation;

(b) Two (2) hours minimum of instruction on ethics, including instruction on fraud, consumer protection and fair lending issues;

(c) Two (2) hours minimum of instruction on lending standards for the nontraditional mortgage product marketplace; and

(d) One (1) hour minimum of instruction directly related to this chapter and rules promulgated pursuant to this chapter.

(2) All continuing education courses and course providers shall be reviewed and approved by the NMLSR based upon reasonable standards.

(3) Nothing in this section shall preclude any approved education course that is provided by the mortgage loan originator's employer or an entity which is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.

(4) Continuing education courses may be completed either in a classroom, online or by any other means approved by the NMLSR.

(5) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, except as provided in section 26-31-309(3), Idaho Code, and subsection (9) of this section, and may not take the same approved course in the same or successive years in order to meet the annual continuing education requirements.

(6) A licensed mortgage loan originator who is an approved instructor may receive credit toward his required annual continuing education hours at the rate of two (2) hours of credit for every one (1) hour of instruction of an approved continuing education course.

(7) An individual having successfully completed the continuing education requirements described in subsection (1)(a) through (c) of this section for any state shall be awarded credit toward completion of continuing education requirements in Idaho.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last

year in which the license was held prior to issuance of a new or renewed license.

(9) An individual meeting the requirements of section 26-31-309(1)(a) and (c), Idaho Code, may make up any deficiency in continuing education requirements as established by rule of the director.

History.
I.C., § 26-31-310, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 19, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, substituted "section 26-31-309(2)" for "section 26-31-309(3)" in subsection (5).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-311. Authority to require license and registration. — In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the NMLSR. In order to carry out this requirement the director is authorized to participate in the NMLSR. For this purpose, the director may establish by rule or order requirements for licensure as a mortgage loan originator, as necessary including, but not limited to:

(1) Background checks, to include:

(a) Criminal history, through fingerprint or other databases;

(b) Civil or administrative records;

(c) Credit history; and

(d) Any other information as deemed necessary by the NMLSR.

(2) The setting or resetting as necessary of renewal or reporting dates; and

(3) Requirements for amending or surrendering a license or any other such activities as the director deems necessary for participation in the NMLSR.

History.
I.C., § 26-31-311, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-312. Nationwide mortgage licensing system and registry information challenge process. — The director shall establish a process whereby mortgage loan originators may challenge the information entered into the NMLSR by the director.

History.
I.C., § 26-31-312, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-313. Enforcement authority, violations and penalties. — (1) In order to ensure the effective supervision and enforcement of this part, the director may, pursuant to chapter 52, title 67, Idaho Code:

(a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, or rule or order issued under this chapter;

(b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee under this part fails at any time to meet the

requirements of section 26-31-306, Idaho Code, or section 26-31-309, Idaho Code, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(c) Deny, suspend, revoke, condition or decline to renew a license if the applicant has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending or loan origination activities;

(d) Order restitution against persons subject to this part for violations of this part;

(e) Impose penalties on persons subject to this part pursuant to subsections (2) through (4) of this section; and

(f) Issue orders under this part as follows:

(i) Order persons subject to this part to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(ii) Order persons subject to this part to cease any harmful activities or violations of this part, including immediate temporary orders to cease and desist;

(iii) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to this part, if the director determines that such license was erroneously granted or the licensee is currently in violation of this part;

(iv) Order such other affirmative action as the director deems necessary.

(2) The director may impose a civil penalty upon a mortgage loan originator or other person subject to this part if the director finds on the record, after notice and the opportunity for a hearing, that such mortgage loan originator or other person subject to this part has violated or failed to comply with any requirement of this part or any rule promulgated or order issued by the director under this chapter and pertinent to this part.

(3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be twenty-five thousand dollars ($25,000).

(4) Each violation of this part, or failure to comply with any rule promulgated or order issued by the director under this chapter and pertinent to this part, is a separate and distinct violation or failure.

History.
I.C., § 26-31-313, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-314. Remedies available to the department. — (1) If the director determines that a person subject to this part has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z or of this part or any rule promulgated or order issued under this chapter and pertinent to this part, then the director may bring an action in any court of competent jurisdiction, and upon a showing of any violation, there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part or any rule

promulgated or order issued under this chapter and pertinent to this part, and to enforce compliance with this part or any rule promulgated or order issued under this chapter and pertinent to this part;

(b) An order that the person violating any provision of this part, or a rule promulgated or order issued under this chapter and pertinent to this part pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation;

(c) An order allowing the director to recover costs, which may include investigative expenses and attorney's fees;

(d) A declaratory judgment that a particular act, practice or method is a violation of the provisions of this part;

(e) Other appropriate remedies including restitution to borrowers.

(2) If the director finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated or order issued under this chapter and pertinent to this part, the director may, in his discretion, order the person to cease and desist from the violations.

History.
I.C., § 26-31-314, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-315. Confidentiality. — In order to promote effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in section 1512, P.L. 110-289, the requirements under any federal law or chapter 3, title 9, Idaho Code, regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or Idaho state law, including the rules of any federal or Idaho state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the NMLSR. Such information and material may be shared with all state and federal regulatory officials having mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 3, title 9, Idaho Code.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to such information or material, the person to

whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) Coordination with chapter 3, title 9, Idaho Code, relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the NMLSR for access by the public.

History.
I.C., § 26-31-315, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 1512 of P.L. 110-289, referred to in subsection (1), is codified as 12 USCS § 5111.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-316. Investigation and examination authority. — In addition to any authority allowed under this chapter, the director shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or inquiry or investigation to determine compliance with this part, the director shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

(a) Criminal, civil and administrative history information including nonconviction data; and

(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(c) Any other documents, information or evidence the director deems relevant to the inquiry or investigation, regardless of the location, possession, control or custody of such documents, information or evidence.

(2) For the purposes of investigating violations or complaints arising under this part, or for the purposes of examination, the director may review, investigate or examine any licensee, individual or person subject to this part, as often as necessary in order to carry out the purposes of this part. The director may subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may subpoena or order such person to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry.

(3) Each licensee, individual or other person subject to this part shall make available to the director upon request the books and records relating to the operations of such licensee, individual or other person subject to this part. The director may interview the licensee's employer, its employees and agents, its independent contractors, its officers and principals, other mortgage loan originators, agents and customers of the licensee, individual or

other person subject to this part. For the purposes of this section, the director shall have free access to the books and records of such persons.

(4) Each licensee, individual or other person subject to this part shall make or compile reports or prepare other information as directed by the director in order to carry out the purposes of this part including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the director; and

(c) Such other information deemed necessary to carry out the purposes of this part.

(5) In making any examination or investigation authorized by this part, the director may control access to any documents and records of the licensee or other person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or other person have been, or are at risk of being altered or destroyed for the purpose of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents and records as necessary to conduct its ordinary business affairs.

(6) In order to carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or other person subject to this part;

(d) Accept and rely on examination or investigation reports made by other government officials, including those inside and outside the state of Idaho; and

(e) Accept and rely upon audit reports made by an independent certified public accountant for the licensee, individual or other person subject to this part. The director may incorporate the audit report in the examination report, investigation report or other writing of the director.

(7) The authority of this section shall remain in effect, whether such a licensee, individual or other person subject to this part acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(8) No licensee, individual or other person subject to investigation or examination under this section may knowingly withhold, abstract, remove,

mutilate, destroy or secrete any books, records, computer records or other information requested by the director.

History.
I.C., § 26-31-316, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 603(p) of the fair credit reporting act, referred to in paragraph (1)(b), is codified as 15 USCS § 1681a(p).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-317. Prohibited acts and practices. — It is a violation of this part for a person or individual subject to this part, in connection with mortgage loan origination activity in this state, to:

(1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides that the person or individual subject to this part may earn a fee or commission through "best efforts" to obtain a loan, even though no loan is actually obtained for the borrower;

(5) Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms, unless the terms are actually available at the time of soliciting, advertising or contracting;

(6) Conduct any business covered by this part without holding a valid license as required under this part, or assist or aid and abet any person in the conduct of business under this part who does not hold a valid license as required under this part;

(7) Fail to make disclosures as required by this part or any other applicable state or federal law including rules or regulations promulgated thereunder;

(8) Fail to comply with provisions of this part or rules promulgated under this part, or fail to comply with any other state or federal law, including the rules and regulations promulgated thereunder, applicable to any business authorized or conducted under this part;

(9) Make any false or deceptive statement or representation, including a false or deceptive statement or representation concerning rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully omit a material fact in connection with any information or reports filed with a government agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat or promise, directly or indirectly, to any appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this part;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction;

(15) Be employed simultaneously by more than one (1) mortgage broker or mortgage lender licensed or required to be licensed under part 2 of this chapter;

(16) Enter into concurrent contractual relationships for delivery of mortgage loan origination services to more than one (1) mortgage broker or mortgage lender licensed or required to be licensed under part 2 of this chapter;

(17) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(18) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(19) Accept any fees at closing which were not previously disclosed fully to the borrower;

(20) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower;

(21) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower as required by rule pursuant to this chapter;

(22) Violate standards of conduct adopted by the NMLSR applicable to a person taking a written test administered pursuant to section 26-31-308, Idaho Code, as found by the director; or

(23) Obtain or attempt to obtain credit for education required pursuant to section 26-31-307 or 26-31-310, Idaho Code, by means of false pretenses or representations.

History.
I.C., § 26-31-317, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 20, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, added subsections (22) and (23).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-318. Unlawful acts. — Any person, not exempt under the provisions of this part, who engages in mortgage loan origination activities without first obtaining a mortgage loan originator license or without first registering as a mortgage loan originator in accordance with the requirements of this part, shall be guilty of a felony.

History.
I.C., § 26-31-318, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

Idaho Law Review. Anatomy of a Mortgage Meltdown: The Story of the Subprime Crisis, the Role of Fraud, and the Efficacy of the Idaho SAFE Act, Comment. 48 Idaho L. Rev. 123 (2011).

26-31-319. Nonfederally insured credit unions. — Nonfederally

insured credit unions which employ loan originators, as defined in P.L. 110-289, shall register such loan originators with the NMLSR by furnishing the information concerning the loan originators' identities set forth in section 1507(a)(2), P.L. 110-289.

History.
I.C., § 26-31-319, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 1507(a)(2), P.L. 110-289, referred to in this section, is codified as 12 USCS § 5106(a)(2).

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-320. Unique identifier disclosure. — The unique identifier of any person engaged in the origination of a residential mortgage loan shall be clearly displayed on all residential mortgage loan application forms, solicitations or advertisements, including business cards, websites and other forms of media, and any other document required by rule promulgated under this chapter or order issued by the director under this chapter and pertinent to this part.

History.
I.C., § 26-31-320, as added by 2009, ch. 97, § 2, p. 285; am. 2013, ch. 64, § 21, p. 142.

Compiler's Notes. The 2013 amendment, by ch. 64, inserted "other forms of media" near the middle of the section.

Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

26-31-321. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.
I.C., § 26-31-321, as added by 2009, ch. 97, § 2, p. 285.

Compiler's Notes. Section 3 of S.L. 2009, ch. 97 provided that the act should take effect on and after July 1, 2009.

CHAPTER 32

TRUST INSTITUTIONS — GENERAL PROVISIONS

SECTION.
26-3205. Activities not requiring a charter.

26-3205. Activities not requiring a charter. — Notwithstanding any other provision of this act, a person does not engage in the trust business or in any other business in a manner requiring a charter under this act, or in an unauthorized trust activity by:

(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(2) Obtaining trust business as a result of an existing attorney-client relationship or certified public accountant-client relationship;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Idaho real estate commission;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Idaho department of finance or the securities and exchange commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Idaho department of insurance to the extent that the activity is regulated by the Idaho department of insurance;

(7) Engaging in the lawful sale of prepaid funeral contracts under a permit issued by the Idaho board of morticians or engaging in the lawful business of a perpetual care cemetery under the Idaho endowment care cemetery act;

(8) Acting as trustee under a voting trust as provided by the Idaho business corporation act;

(9) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(10) Engaging in other activities expressly excluded from the application of this act, by rule of the director;

(11) Acting as a fiduciary for relatives;

(12) Provided the company is a trust institution and is not barred by order of the director from engaging in a trust business in this state pursuant to section 26-3603(2), Idaho Code:

(a) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(b) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(c) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client;

(13) Acting pursuant to court appointment as:

(a) A personal representative of a decedent's estate; or

(b) A guardian or conservator of an estate.

History.

I.C., § 26-3205, as added by 2000, ch. 288, § 8, p. 970.

Compiler's Notes. This section has been reprinted to correct an error appearing in the bound volume.

CHAPTER 37

IDAHO CONTINUING-CARE DISCLOSURE ACT

SECTION.
26-3701. Short title.
26-3702. Statement of purpose.
26-3703. Definitions.
26-3704. Registration — Annual fee.
26-3705. Disclosure statement of financial responsibility.
26-3706. Specification for residence contracts.
26-3707. Escrow — Trust — Surety bond — Collection of deposits.
26-3708. Cross-collateralization prohibited.
26-3709. Audits.
26-3710. Civil liability.
26-3711. Injunctions.
26-3712. Denial, suspension, revocation of registration — Grounds.
26-3713. Oaths — Subpoenas — Punishment — Exemption from criminal prosecution for testimony.
26-3714. Criminal penalties.
26-3715. Regulatory authority.

26-3701. Short title. — This chapter shall be known and may be cited as the "Idaho Continuing-Care Disclosure Act."

History.
I.C., § 26-3701, as added by 2005, ch. 265, § 15, p. 810.

26-3702. Statement of purpose. — The legislature recognizes that continuing care communities have become an important and necessary alternative for the long-term residential, social and health maintenance needs for many of the state's elderly citizens.

The legislature finds and declares that tragic consequences can result to citizens of the state when a provider of services under a continuing care agreement becomes insolvent or unable to provide responsible care. The legislature recognizes the need for full disclosure with respect to the terms of agreements between prospective residents and the provider and the operations of such providers. Accordingly, the legislature has determined that these providers should be regulated in accordance with the provisions of this chapter. The provisions of this chapter apply equally to for-profit and not-for-profit provider organizations. The provisions of this chapter shall be the minimum requirements to be imposed upon any person, association or organization offering or providing continuing care as set forth in this chapter.

History.
I.C., § 26-3702, as added by 2005, ch. 265, § 15, p. 810.

26-3703. Definitions. — As used in this chapter:

(1) "Continuing care" means the furnishing to an individual, other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, pursuant to an agreement requiring an entrance fee.

(2) "Department" means the department of finance.

(3) "Director" means the director of the department of finance or his authorized designee.

(4) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility. A fee which is less than the sum of the regular periodic charges for six (6) months of residency will not be considered to be an entrance fee for the purposes of this chapter.

(5) "Facility" means the place or places in which a person undertakes to provide continuing care to an individual.

(6) "Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one (1) or more identified individuals.

(7) "Provider" means the promoter, developer, or owner of a continuing care facility, whether a natural person, partnership, unincorporated association, trust, or corporation, or any other person, or that person's successors or assigns that solicits or undertakes to provide continuing care to the public under a continuing care facility contract.

(8) "Resident" means an individual entitled to receive continuing care in a facility.

History.
I.C., § 26-3703, as added by 2005, ch. 265, § 15, p. 810.

26-3704. Registration — Annual fee. — Each provider who provides continuing care services in this state shall register with the director on forms provided by the department and shall pay an annual registration fee. Such registration fee shall be fixed by the director but shall not exceed five hundred dollars ($500) per facility. No provider shall be allowed to operate a facility until so registered and until the provider has filed with the director a disclosure statement as set forth in section 26-3705, Idaho Code. All fees received by the director shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

History.
I.C., § 26-3704, as added by 2005, ch. 265, § 15, p. 810.

26-3705. Disclosure statement of financial responsibility. — As a condition to registration with the department, each provider must file evidence of financial responsibility. Said evidence shall be on registration forms provided by the director. The registration forms shall request such information as the director, in his discretion, shall deem appropriate to carry out the functions of this chapter. The director shall require, however, the following information to be included on the provider's statement of financial responsibility:

(1) The names and business addresses of the officers, directors, trustees, managing or general partners, any person having a ten percent (10%) or greater equity or beneficial interest in the provider, and any person who will be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider.

(2) Information as follows on all persons named in response to the information required in subsection (1) of this section:

(a) A description of the business experience of this person, if any, in the operation or management of similar facilities;

(b) The name and address of any professional service, firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of five hundred dollars ($500) or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility, provider, or residents or a statement that this cost cannot presently be estimated; and

(c) A description of any matter in which the person: (i) has been convicted, or found guilty of, or received a withheld judgment for a felony, or been held liable, or enjoined in a civil action by final judgment, which civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (ii) is subject to a currently effective injunctive or restrictive court order in any action involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (iii) within the past five (5) years, had any local, state or federal license or permit suspended or revoked as a result of fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(3) A statement as to whether the provider is, or is not affiliated with, an eleemosynary or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider, and the provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.

(4) A detailed description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include, but not be limited to:

(a) The circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident;

(b) The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

(c) The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any; and, if the facility is already in operation, or if the provider or manager operates one (1) or more similar continuing care locations within this state, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five (5) years, or such shorter period as the facility or location may have been operated by the provider or manager.

(5) The health and financial conditions required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person.

(6) The provisions that have been made or will be made to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions.

(7) Certified financial statements of the provider, including (i) a balance sheet as of the end of the most recent fiscal year, and (ii) income statements for the three (3) most recent fiscal years of the provider or such shorter period of time as the provider shall have been in existence. The director shall only accept certified financial statements that have been prepared and certified by or under the direction of a certified public accountant. If the provider's fiscal year ended more than one hundred twenty (120) days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than ninety (90) days prior to the date of recording the statement shall be included, but need not be certified.

(8) A summary of a report of an actuary, updated every five (5) years, that estimates the capacity of the provider to meet its contract obligation to the residents. Disclosure statements of continuing care facilities established prior to January 1, 1988, do not need an actuary report or summary until January 1, 1993.

(9) If operation of the facility has not yet commenced, a detailed and itemized statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility. Said statements shall also include a detailed and itemized estimate of the funds, if any, that are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care.

(10) Pro forma annual income statements and balance sheets for the facility for a period of not less than five (5) fiscal years with supporting documentation as the director may, in his discretion, require.

(11) All material information relevant to a decision of a prospective resident to enter into a continuing care contract with the provider, whether or not specifically requested by the director.

(12) All other information required by the director.

(13) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this chapter but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set out.

(14) A copy of the standard form of contract for continuing care used by the provider shall be attached to and be considered a part of the disclosure statement.

History.
I.C., § 26-3705, as added by 2005, ch. 265, § 15, p. 810.

26-3706. Specification for residence contracts. — (1) In addition to such other provisions as may be considered proper to effectuate the purpose of any continuing care agreement, each agreement executed on and after the date of the adoption of this chapter shall be written in nontechnical language easily understood by a layperson and shall:

(a) Show the value of all property transferred, including donations, subscriptions, fees and any other amounts paid or payable by, or on behalf of, the resident or residents;

(b) Specify in detail all services which are to be provided by the provider to each resident;

(c) Describe the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;

(d) State the fees and conditions that will apply if the resident marries while at the designated facility;

(e) Provide that the agreement may be canceled upon the giving of notice of cancellation of at least thirty (30) days by the resident. An agreement may be canceled by the provider if there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others;

(f) Provide in print no smaller than the largest type used in the body of said agreement, the terms governing the refund of any portion of the entrance fee;

(g) State the terms under which an agreement is canceled by the death of the resident. The agreement may contain a provision to the effect that, upon the death of the resident, the moneys paid for the continuing care of such resident shall be considered earned and become the property of the provider;

(h) Provide for advance notice to the resident, of not less than thirty (30) days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs;

(i) Provide that charges for care paid in one (1) lump sum shall not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(2) A resident shall have the right to rescind a continuing care agreement, without penalty or forfeiture, within seven (7) days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the seven (7) day period.

(3) If a resident dies before occupancy date, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the

continuing care agreement, the agreement is automatically rescinded and the resident or his legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the agreement.

(4) No agreement for care shall permit dismissal or discharge of the resident from the facility providing care prior to the expiration of the agreement, without just cause for such a removal. Just cause may include, but not be limited to, a good faith determination in writing, signed by the medical director and the administrator of the facility that a resident is a danger to himself or others while remaining in the facility. Dismissal for just cause shall not affect the resident's qualification for a refund under the contract.

(5) No act, agreement or statement of any resident, or of any individual purchasing care for a resident under any agreement to furnish care to the resident, shall constitute a valid waiver of any provision of this chapter intended for the benefit or protection of the resident or the individual purchasing care for the resident.

History.
I.C., § 26-3706, as added by 2005, ch. 265, § 15, p. 810.

26-3707. Escrow — Trust — Surety bond — Collection of deposits. — (1) A provider shall establish an escrow account with a bank or a trust company, that is located in Idaho, agreed upon by the provider and the resident. The terms of this escrow account shall provide that the total amount of any entrance fee received by the provider prior to the date the resident is permitted to occupy a living unit in the facility be placed in this escrow account. These funds may be released only as follows:

(a) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;

(b) If the entrance fee applies to a living unit which has not been previously occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:

(i) Construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits;

(ii) A commitment has been received by the provider for any permanent mortgage loan, long-term financing or other source of capital and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and

(iii) Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan, long-term financing commitment, or other source of capital, are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than

ninety percent (90%) of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as that part of the disclosure statement required in section 26-3705, Idaho Code, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement community contracts.

(2) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five (5) working days unless the escrow agent finds that the requirements of subsection (1) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(3) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(4) An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

(5) In addition to the escrow requirement of this section, each provider shall provide a surety bond or an irrevocable letter of credit in a form acceptable to the department. Any surety bond offered as evidence of financial responsibility must be written by a company authorized to do business in this state. The bond must be in effect at any time that funds remain in escrow under the provisions of this section and shall be an amount not less than the aggregate value of all outstanding amounts in escrow.

History.
I.C., § 26-3707, as added by 2005, ch. 265, § 15, p. 810.

26-3708. Cross-collateralization prohibited. — No part of the entrance fee placed in escrow may be pledged by the provider as collateral for the purpose of securing loans for any purpose other than providing for the care of the resident.

History.
I.C., § 26-3708, as added by 2005, ch. 265, § 15, p. 810.

26-3709. Audits. — Each provider upon annual renewal of registration shall provide to the director certified audited reports of the financial condition of the facility and shall amend the disclosure required by section 26-3704, Idaho Code, as necessary. The annual audited reports shall be prepared by or under the supervision and direction of a certified public accountant according to generally accepted accounting principles and shall

contain such additional information as may be required by the director. The annual renewal of registration shall be filed with the director not later than ninety (90) days after the close of the provider's fiscal year as used for state income tax purposes.

History.
I.C., § 26-3709, as added by 2005, ch. 265, § 15, p. 810.

26-3710. Civil liability. — (1) Any person who, as a provider, or on behalf of a provider:

(a) Enters into a contract for continuing care at a facility which has not registered under this chapter;

(b) Enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for such continuing care;

(c) Enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which contains a misstatement of a material fact or which omits a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading; or

(d) Engages in any fraudulent or deceptive practices in the provision of services to the resident, or prospective resident;

shall be deemed to have violated the terms of this chapter and shall be liable to the person contracting for such continuing care for damages and repayment of all fees paid to the provider, facility or person in violation of the provisions of this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or the time the violation, misstatement or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments and court costs and reasonable attorney's fees.

(2) Liability under this section shall exist regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

(3) A person may not file or maintain an action under this section if the person, before filing the action, received an offer, approved by the director, to refund all amounts paid the provider, facility or person in violation of the provisions of this chapter together with interest from the date of payment, less the reasonable value of care and lodging provided prior to the receipt of the offer and the person failed to accept the offer within thirty (30) days of receipt. At the time a provider makes a written offer of rescission, the provider shall file a copy with the director. The rescission offer shall recite the provisions of this section.

(4) An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six (6) years after the execution of the contract for continuing care which gave rise to the violation.

(5) Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as

a result of the violation of this chapter or a rule or order promulgated or issued under this chapter. This chapter shall not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

History.
I.C., § 26-3710, as added by 2005, ch. 265, § 15, p. 810.

26-3711. Injunctions. — Whenever it appears to the director that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the director may:

(1) Issue an order directed at any such person requiring such person to cease and desist from engaging in such act or practice.

(2) Bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or directive of the director promulgated hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director shall not be required to post a bond.

History.
I.C., § 26-3711, as added by 2005, ch. 265, § 15, p. 810.

26-3712. Denial, suspension, revocation of registration — Grounds. — The director may by order deny, suspend or revoke registration of any provider:

(1) If he finds the order is in the public interest; or

(2) Any of the conditions described in section 26-3705(2)(c), Idaho Code, apply to the provider.

In addition the director may impose an administrative fine in an amount not to exceed five thousand dollars ($5,000) for each violation of the provisions of this chapter.

Prior to the revocation or suspension of any registration, the provider shall be given an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code. Judicial review of the final order of the director shall be governed by chapter 52, title 67, Idaho Code.

History.
I.C., § 26-3712, as added by 2005, ch. 265, § 15, p. 810.

26-3713. Oaths — Subpoenas — Punishment — Exemption from criminal prosecution for testimony. — For the purpose of any investigation or proceeding under this chapter the director or any officer desig-

nated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the director deems relevant or material to the inquiry.

(1) In case of contumacy or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question and any failure to obey such order of the court may be punished by the court as a contempt of court.

(2) No person is excused from attending and testifying, from producing any document or record before the director or from obeying the subpoena of the director or any officer designated by him or in any proceeding instituted by the director on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History.
I.C., § 26-3713, as added by 2005, ch. 265, § 15, p. 810.

26-3714. Criminal penalties. — (1) Any person who willfully and knowingly violates any provision of this chapter, or any rule or order under the chapter, shall be guilty of a misdemeanor and be sentenced to pay a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one (1) year in the county jail or both for each violation.

(2) The director may refer such evidence as is available concerning violations of the provisions of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(3) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

History.
I.C., § 26-3714, as added by 2005, ch. 265, § 15, p. 810.

26-3715. Regulatory authority. — The director shall have the authority to adopt, amend or repeal such rules as are reasonably necessary for the enforcement of the provisions of this chapter.

History.

I.C., § 26-3715, as added by 2005, ch. 265, § 15, p. 810.

Compiler's Notes. Section 20 of S.L. 2005, ch. 265 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

TITLE 27

CEMETERIES AND CREMATORIUMS

CHAPTER.
1. Cemetery Maintenance District Law, §§ 27-107, 27-111, 27-114, 27-120.
3. Crematoriums. [Repealed.]
4. Endowment Care Cemetery Act, §§ 27-408, 27-411, 27-413.

CHAPTER 1

CEMETERY MAINTENANCE DISTRICT LAW

SECTION.
27-107. Election — Qualification of electors — Canvass.
27-111. Election of commissioners.
27-114. Organization of board — Meetings — Officers — Official bonds.
27-120. Auditor to furnish assessed valuation — Board to make levy.

27-107. Election — Qualification of electors — Canvass. — Such election shall be conducted in accordance with chapter 12 and chapter 14, title 34, Idaho Code. The board of county commissioners shall establish as many election precincts within such proposed cemetery maintenance district as may be necessary, and define the boundaries thereof. The county clerk shall appoint judges of election, who shall perform the duties as judges of election under the provisions of title 34, Idaho Code; and the result of such election shall be certified, and canvassed and declared by the board of county commissioners.

History.
1927, ch. 197, § 6, p. 264; I.C.A., § 27-106; I.C., § 28-107 (1948 Ed.); am. 1982, ch. 254, § 5, p. 646; am. 1995, ch. 118, § 16, p. 417; am. 2009, ch. 341, § 10, p. 993.

Compiler's Notes. The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

27-111. Election of commissioners. — (1) On the first Tuesday following the first Monday in November and every odd-numbered year thereafter, three (3) cemetery maintenance district commissioners shall be elected by the electors of each cemetery district as defined in section 27-104, Idaho Code. For commissioners whose offices expire in 2012 and in any even-numbered year, such commissioners shall remain in office until the next election in an odd-numbered year. The county clerk shall conduct the election in a manner consistent with statutory provisions of chapter 14, title 34, Idaho Code. Of the commissioners comprising the board at any one (1) time, not more than one (1) shall be an elector of the same cemetery maintenance commissioners subdistrict. A commissioner shall be an elector of the subdistrict which he represents at the time of his declaration of candidacy and during his term of office. A qualified elector of the cemetery maintenance district shall be eligible to vote for each of the cemetery

maintenance district commissioners. At the first election following the formation of a cemetery maintenance district, commissioners from cemetery maintenance subdistricts one (1) and two (2) shall be elected for terms of four (4) years, and the commissioner from cemetery maintenance subdistrict three (3) shall be elected for a term of two (2) years; thereafter the term of office of all commissioners shall be four (4) years. All elections held under this law, shall be held in conformity with the general laws of the state, including chapter 14, title 34, Idaho Code.

(2) In any election for cemetery maintenance district commissioners, if, after the expiration of the date for filing a declaration of intent as a write-in candidate for the office of commissioner, it appears that only one (1) qualified candidate has been nominated for each position to be filled, it shall not be necessary to hold an election, and the board of commissioners shall declare such candidate elected as commissioner, and the secretary shall immediately make and deliver to such person a certificate of election signed by him bearing the seal of the district. The procedure set forth in this subsection shall not apply to any other cemetery maintenance district election.

History.

1927, ch. 197, § 10, p. 264; I.C.A., § 27-110; I.C., § 28-111 (1948 Ed.); am. 1967, ch. 14, § 1, p. 23; am. 1982, ch. 250, § 1, p. 641; am. 1995, ch. 118, § 17, p. 417; am. 2009, ch. 341, § 11, p. 993.

Compiler's Notes. The 2009 amendment, by ch. 341, in subsection (1), substituted "odd-numbered year" for "alternate year" in the first sentence, added the second sentence, and substituted "county clerk" for "board of cemetery maintenance commissioners" in the third sentence.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

27-114. Organization of board — Meetings — Officers — Official bonds. — Immediately after qualifying, the board of cemetery maintenance commissioners shall meet and organize as a board, and at that time, and whenever thereafter vacancies in the respective offices may occur, they shall elect a president from their number, and shall appoint a secretary and treasurer who may also be from their number, all of whom shall hold office during the pleasure of the board, or for terms fixed by the board. The offices of secretary and treasurer may be filled by the same person. Certified copies of all such appointments, under the hand of each of the commissioners, shall be forthwith filed with the clerk of the board of county commissioners and with the tax collector of the county.

As soon as practicable after the organization of the first board of cemetery maintenance commissioners, and thereafter when deemed expedient or necessary, such board shall designate a day and hour on which regular meetings shall be held and a place for the holding thereof, which shall be within the district. Regular meetings shall be held at least quarterly. The minutes of all meetings must show what bills are submitted, considered, allowed or rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what service or material, when and where used, amount claimed, allowed or disallowed. Such list shall be signed by the chairman and attested by the secretary: provided, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order, five (5) days' notice of special meetings: provided,

further, that whenever all members of the board are present, however called, the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board must be public, and a majority shall constitute a quorum for the transaction of business. All records shall be open to the inspection of any elector during business hours.

The officers of the district shall take and file with the secretary, an oath for the faithful performance of the duties of the respective offices. The treasurer shall on his appointment execute and file with the secretary an official bond in such an amount as may be fixed by the cemetery maintenance board but in no case less than ten thousand dollars ($10,000).

History.
1927, ch. 197, § 12, p. 264; I.C.A., § 27-113; I.C., § 28-114 (1948 Ed.); am. 2006, ch. 24, § 1, p. 82.

Compiler's Notes. The 2006 amendment, by ch. 24, substituted "but in no case less than ten thousand dollars ($10,000)" for "which amount shall be at least sufficient to cover the probable amounts of money coming into his hands and twenty-five percent (25%) thereof in addition thereto" at the end of the last paragraph.

27-120. Auditor to furnish assessed valuation — Board to make levy. — On or before the third Monday in July of each year, the county auditor shall deliver to the secretary of each cemetery maintenance district within the county a statement showing the aggregate valuation of all the taxable property in such district; and thereafter the cemetery board shall levy the taxes herein provided for.

History.
1927, ch. 197, § 18, p. 264; I.C.A., § 27-119; I.C., § 28-120 (1948 Ed.); am. 2012, ch. 38, § 1, p. 115.

Compiler's Notes. The 2012 amendment, by ch. 38, substituted "auditor" for "assessor" in the section heading and in the text and substituted "third Monday" for "first Monday" near the beginning of the section.

Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

CHAPTER 3

CREMATORIUMS

SECTION.
27-301 — 27-310. [Repealed.]

27-301 — 27-310. Definitions of terms — Cremation of human remains — Inspection of crematories — Rules — Removal of human remains — Permits to operate crematories — License or permit fee — Renewal — Records of crematories — Revocation and refusal to reissue license — Violation declared public nuisance — Enforcement — Penalties — Conflict with existing laws. [Repealed.]

Compiler's Notes. The following sections were repealed by S.L. 2003, ch. 218, § 1, effective July 1, 2003.

§ 27-301, which comprised 1957, ch. 191, § 1, p. 378; I.C., § 28-301 (1957 Supp.).

§ 27-302, which comprised 1957, ch. 191, § 2, p. 378; I.C., § 28-302 (1957 Supp.); am. 1994, ch. 105, § 1, p. 234.

§ 27-303, which comprised 1957, ch. 191, § 3, p. 378; I.C., § 28-303 (1957 Supp.); am. 1974, ch. 23, § 3, p. 633; am. 1996, ch. 174, § 1, p. 558.

§ 27-304, which comprised 1957, ch. 191, § 4, p. 378; I.C., § 28-304 (1957 Supp.).

§ 27-305, which comprised 1957, ch. 191, § 5, p. 378; I.C., § 28-305 (1957 Supp.); am. 1974, ch. 23, § 4, p. 633; am. 1994, ch. 105, § 2, p. 234; am. 1996, ch. 174, § 2, p. 558.

§ 27-306, which comprised 1957, ch. 191, § 6, p. 378; I.C., § 28-306 (1957 Supp.); am. 1974, ch. 23, § 5, p. 633; am. 1996, ch. 174, § 3, p. 558; am. 2001, ch. 135, § 1, p. 494.

§ 27-307, which comprised 1957, ch. 191, § 7, p. 378; I.C., § 28-307 (1957 Supp.); am. 1974, ch. 23, § 6, p. 633; am. 1994, ch. 105, § 3, p. 234; am. 1996, ch. 174, § 4, p. 558.

§ 27-308, which comprised 1957, ch. 191, § 8, p. 378; I.C., § 28-308 (1957 Supp.); am. 1974, ch. 23, § 7, p. 633; am. 1996, ch. 174, § 5, p. 558.

§ 27-309, which comprised 1957, ch. 191, § 9, p. 378; I.C., § 28-309 (1957 Supp.); am. 1974, ch. 23, § 8, p. 633; am. 1996, ch. 174, § 6, p. 558.

§ 27-310, which comprised 1957, ch. 191, § 10, p. 378; I.C., § 28-310 (1957 Supp.).

CHAPTER 4

ENDOWMENT CARE CEMETERY ACT

SECTION.
27-408. Instrument in writing.
27-411. Annual registration statement with administrator.
SECTION.
27-413. Records subject to examination.

27-408. Instrument in writing. — The trust fund so created shall be evidenced by an instrument in writing, and shall contain in addition to the requirements of section 27-407, Idaho Code, the following provisions:

(a) That there shall be designated a trustee under this act, which shall be any federally insured financial institution located within the state of Idaho, duly authorized to transact a trust business, or the board of directors of the cemetery authority. When the trust fund is in the care of such board of directors as a board of trustees, the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings.

(b) Where the trust is vested in such board of directors as a board of trustees, each of said trustees shall file with the administrator a surety bond in the amount of five thousand dollars ($5,000), conditioned upon his full and faithful performance of his trust obligations.

(c) As compensation, the trustee, whether it be a financial institution acting in such capacity or the board of directors of a cemetery authority acting as the trustee, shall be entitled to compensation in an amount not exceeding twenty-five dollars ($25.00) quarterly, or a sum equal to one and one-half percent (1 1/2%) per annum of the principal of the trust fund, whichever is the greater.

(d) In connection with its investment of the trust fund, the trustee shall be governed by the terms of the uniform prudent investor act, chapter 5, title 68, Idaho Code, as presently enacted or as may be from time to time amended.

(e) The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used exclusively for the care of those portions of the cemetery in which lots have been sold with the provision for perpetual or endowed care. It is the intent of this section that the income of said fund shall be used solely for the care of lots or other burial spaces sold to third persons with the provision for perpetual or endowed care, and the care and embellishment of such other

portions of the cemetery as may be desirable to preserve the beauty and dignity of the lots sold.

(f) The initial endowment care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached the sum of one hundred thousand dollars ($100,000), when it may be withdrawn at the rate of two thousand dollars ($2,000) from the original fifty thousand dollars ($50,000) for each additional six thousand dollars ($6,000) added to the fund, this to continue until the entire original fifty thousand dollars ($50,000) has been withdrawn by the cemetery authority.

History.
1963, ch. 179, § 8, p. 527; I.C., § 28-408 (1963 Supp.); am. 1972, ch. 84, § 2, p. 168; am. 1973, ch. 199, § 2, p. 450; am. 1978, ch. 163, § 2, p. 352; am. 1997, ch. 14, § 3, p. 14; am. 2004, ch. 298, § 1, p. 831.

27-411. Annual registration statement with administrator. — Every cemetery authority owning, operating, controlling or managing an endowed care cemetery shall register with the administrator, by filing an annual registration statement on forms furnished by said administrator, which shall show, as of the end of the preceding calendar year or fiscal year, whichever is more convenient to the cemetery authority, the following:

(a) The amount of the principal of the care funds held by the trustee of said funds of such cemetery authority, at the beginning of such year, and in addition thereto all moneys or property received during such year, from the following sources:

(1) Under and by virtue of the sale of a lot, grave, crypt or niche.

(2) Under and by virtue of any gift, grant, devise, bequest, payment or other contribution made subsequent to the effective date of the endowed care cemetery act of 1963 [March 19, 1963].

(b) The income received from such care funds during the preceding calendar or fiscal year as the case may be. Where any of the care funds of a cemetery authority are held by a trustee, other than the board of directors of the cemetery authority, the annual registration statement filed by any cemetery authority shall also contain a certificate signed by the trustee of the care funds of such cemetery authority certifying to the truthfulness of the statements in the report as to:

(1) The total amount of principal of the care funds held by the trustee.

(2) The securities in which such care funds are invested and the cash on hand as of the day of the report; and

(3) The income received from such care funds during the preceding calendar year or fiscal year as the case may be.

Such statement shall be filed by the cemetery authority on or before December 31 of each calendar year with the administrator. If the fiscal year of such cemetery authority is other than on a calendar year basis, then such statement shall be filed within thirty (30) days of the end of its fiscal year. A filing fee in an amount to be fixed by the administrator but not to exceed the sum of one hundred fifty dollars ($150) shall be payable at the time of the filing of the annual statement. All reports shall be prepared by an independent certified public accountant or by a member of the Canadian institute of chartered accountants.

History.
1963, ch. 179, § 11, p. 527; I.C., § 28-411 (1963 Supp.); am. 1974, ch. 24, § 30, p. 744; am. 1978, ch. 163, § 3, p. 352; am. 2004, ch. 298, § 2, p. 831.

Compiler's Notes. The bracketed date in paragraph (a)(2) was added by the compiler.

Sections 1 and 3 of S.L. 2004, ch. 298 are compiled as §§ 27-408 and 27-413, respectively.

27-413. Records subject to examination. — All records of a cemetery authority are subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the administrator, as the administrator deems necessary or appropriate in the public interest.

History.
I.C., § 27-413, as added by 2004, ch. 298, § 3, p. 831.